UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2012

10:10 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

Doc# 1429 Conference on the Status of Discovery and Other Matters Related to Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the RMBS Settlement Agreements (related document(s)320)

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THE COURT: All right. Please be seated. We're here in Residential Capital LLC, number 12-12020.

Mr. Princi?

MR. PRINCI: Good morning, Your Honor. Anthony Princi of Morrison & Foerster on behalf of the debtors. Your Honor, just to make sure that we're starting off on the same page, I just want to confirm that the Court has received the documents which were filed yesterday afternoon into last evening from various parties, so as the Court is -- by my account, Your Honor, the debtors filed, initially, a status report. That was followed by a response of the creditors' committee --

THE COURT: Mr. Princi, let me assure you, despite the fact that I spent two days observing the New Year and, therefore, didn't see anything until very early this morning, I have reviewed everything.

MR. PRINCI: Okay. Then I'll commence. Judge, I think there are three main disputes for the Court to decide. One is the question of whether the debtors fail to substantially comply with the scheduling order. And to narrow that, I think the -- putting aside the nits and gnats, I think the fundamental allegation is that the loan files that we produced were produced after the ten-day period called for by the scheduling order.

Number 2, I believe, is the question of whether now

that a second amended settlement agreement has been executed, been circulated to the parties, and that second amended settlement agreement removes the HoldCo election, whether at this junction in the case alter ego discovery is necessary in connection with the Court's adjudication of the 9019 motion.

And number 3, whether depositions of the principal people on behalf of the debtors, which consist mostly of the in-house lawyers at the debtor and myself and a couple of my colleagues at Morrison & Foerster, whether depositions of those people should be taken forthwith, in connection with the adjudication of the 9019 motion.

I believe those are, fundamentally, Your Honor, the open issues for the Court. Let me --

THE COURT: When I read the papers, the responses to your status report have focused heavily on the production of -- search for and production of e-mails, not only for Morrison & Foerster lawyers, which has either been done or is in the process of being done; several other Morrison & Foerster lawyers were specifically identified. But additionally, the issue of whether there has been a search for e-mails of --

MR. PRINCI: Other people at ResCap.

THE COURT: -- people from the debtors but also from AFI.

MR. PRINCI: Okay.

THE COURT: That seemed to me -- I mean, I'll tell you

quite honestly, Mr. Princi, it seemed to me that the issue about the production of the loan files -- yes, it was important, but it didn't seem to me to be the big issue today.

MR. PRINCI: Okay. Let me address, Judge, that point and then I think that'll dovetail into the question of depositions as well. So contextually, Judge, what we have is a situation where the question that will be before the Court when the hearing is held is whether an 8.7 billion dollar allowed claim for the 392 trusts that are involved in that settlement is reasonable. And the analysis of that issue is one that has been ongoing for quite some time and that, we believe, is independent from the collateral questions of who said what to whom in the negotiations.

We have asked the parties for a while to reconsider their position with respect to that with a view that, first, presumably, it would inform their judgment as to whether to pursue that line of discovery if they first consider whether the 8.7 billion dollars is reasonable. For example, if one were to conclude, on their part, that the 8.7 billion dollar proposed claim is outrageously high -- outrageously high -- they can then presumably allege that the possible reason for why that's outrageously high has to do with their theory of collusion which, simply stated, is: Ally is the parent company of ResCap. ResCap, at the time of the petition, entered into not only the RMBS settlement agreement but also the plan

support agreement. Therefore, ipso facto, Ally was pulling the strings of its puppet, ResCap, to get ResCap to settle for the amount in question.

But presumably, what people on the other side would want to do is first figure out whether 8.7 is within the realm of reasonableness. So we have taken the position, Judge, for a while, that not only does --

THE COURT: Let me ask you this --

MR. PRINCI: Yes?

THE COURT: -- Mr. Princi. When I read your status report, you seemed quite offended that the committee and others have embarked, late in your view, on an effort to depose the negotiators of the settlement. When I read Mr. Bentley's response, he set out that for a very considerable period of time, in discussions with debtors' counsel, they agreed to defer, in the first instance, the issue of discovery from the negotiators. But they say it's hardly a surprise or news to your colleagues that the potential for that discovery has been on the table virtually from the start of these proceedings regarding approval of the RMBS settlement.

MR. PRINCI: Well, Judge, it was a surprise in two ways. Number 1, we never would expect a constituency that's looking out for the interest of the estate to want to potentially jeopardize --

THE COURT: They're looking out for the constituency

as their creditors. That's their primary responsibility, is to look out for the unsecured creditors. And you're supposed to be looking after the debtors. And you're obviously at loggerheads with a whole group of constituents.

MR. PRINCI: I stand corrected and you're absolutely right. We look -- it is our obligation to look at the interests of all the estates. It is their obligation to look into the interest, solely, of the unsecured creditors. My point, Judge, is this. The sale that we have teed up unquestionably is advantageous to the creditors -- the unsecured creditors. So we did not anticipate having understood -- we thought they understood us in saying, look, make your assessment first of whether this is reasonable or not before you launch into something that'll get us so sidetracked --

THE COURT: Look, you agreed on a discovery schedule that requires that all fact discovery be completed by September 24th. We're on September 19th. When do you expect them -- if they believe that the arm's-length nature of the negotiations -- a factor identified in In re: Iridium Operating, the Second Circuit's decision -- on what are the -- they set out seven nonexclusive factors for court's to consider in deciding whether to approve the settlement. When is it supposed to do that discovery if September 24th is the current cutoff date for fact discovery?

MR. PRINCI: Judge, let me make clear. We do not believe that they should be permitted to take that kind of -- those depositions. But if they are, Judge, this case is going to change dramatically. We will have to put off -- and we simply -- you're talking about taking the depositions of the people who run these cases. I was going to use the word brain trust but since I'm involved in there, I didn't want to be presumptuous. But the people who run these cases, Judge, are the in-house lawyers at ResCap and the financial -- the principal people at FTI and the principal people at Morrison & Foerster. And those are the depositions that people want to take.

THE COURT: Well, look, I am very wary of ever authorizing the depositions of lawyers in a case. And I'm mindful of how the Second Circuit, quite properly, has dealt with the issue. But your own submission indicates that the principal negotiators of the RMBS settlement were the lawyers. It's -- was there one senior executive from the debtors who was present or heavily involved throughout the negotiations and the completion of the RMBS settlement, which I guess takes us -- I still haven't seen this amendment that you've now advised me about. As of the status reports, at least, it was still anticipated but -- even in your status report, once again it was anticipated but had not happened.

Okay. Is there a senior executive from any of the

debtors, is there a senior executive from AFI who participated substantially in the negotiations of the RMBS settlement? What you've -- your own papers say the principal negotiators were the lawyers and you say lawyers shouldn't be deposed. But you haven't said that X, Y or Z were principal negotiators from the debtors. So you have not really provided an alternative. If there's to be discovery of -- regarding the settlement negotiations, that there is one or more people who are not acting as lawyers, who were acting -- they may be lawyers but they were acting in a business capacity, who were substantially involved in the settlement negotiations. Can you answer that?

MR. PRINCI: Yes. Your Honor, I believe that the businesspeople are lawyers, okay?

THE COURT: That's okay. I mean --

MR. PRINCI: And I think what the issue comes down to, Judge, is that we don't believe that the law that Your Honor referenced -- in other words, the -- one of the seven factors in Iridium is eclipsed by the other law in this circuit with respect to requests to depose the lawyers of --

THE COURT: Your view; not necessarily my view. But let's get back --

MR. PRINCI: Okay.

THE COURT: Was there -- was there a senior executive, acting in a business capacity, for any of the debtors that was substantially involved in the settlement negotiations? It's

fine that they're a lawyer. If they're acting in a business capacity, they shouldn't be exempt from discovery. Is there someone?

MR. PRINCI: There is someone.

THE COURT: Who is it?

MR. PRINCI: That's Mr. Cancelliere.

THE COURT: How do you spell that?

MR. PRINCI: C-O-N-C-I-L-L-I-E-R-E, (sic) if I'm not mistaken.

THE COURT: And what is his -- what was his title?

MR. PRINCI: His title -- excuse me one second, Your Honor. Pardon me, Judge. That's C-A-N --

THE COURT: Okay.

MR. PRINCI: -- C-I-L-L-I (sic) --

THE COURT: Yes. And what is --

MR. PRINCI: -- E-R-E.

THE COURT: What is his position?

MR. PRINCI: He's a mortgage risk officer.

THE COURT: That doesn't sound like a legal capacity to me.

MR. PRINCI: No, no. I'm saying he is -- I'm saying I tried to come up with somebody who wasn't a lawyer.

THE COURT: And he -- and Mr. Cancelliere was substantially involved in the negotiations of the settlement, the RMBS settlement?

MR. PRINCI: Can I confer with my client just for a moment, judge?

THE COURT: Yeah, go ahead.

MR. PRINCI: Yes, Your Honor.

THE COURT: And had you provided Mr. Cancelliere's name in the role and a description of the role he played in the RMBS settlement to the committee and the other parties-in-interest who were seeking such discovery?

MR. PRINCI: I don't want to speak off the top of my head. But now I can. Yes.

THE COURT: Go ahead, Mr. Princi.

MR. PRINCI: All right, Your Honor. I don't -- I understand where Your Honor may well be going but I do want to --

THE COURT: I don't know where I'm coming out of this, you know? I spent a lot of hours starting very early this morning reading a lot of stuff, okay?

MR. PRINCI: I'm sorry, I just -- did you say you --

THE COURT: I have not decided where I'm coming out.

MR. PRINCI: Thank you, Your Honor. Okay. Then let me, Your Honor, try to suggest what we think would be a balanced approach here and --

THE COURT: Let's -- before we get to the balanced approach. What's -- your view, obviously, is that -- first off, tell me when the amended RMBS settlement was signed?

MR. PRINCI: You're talking about the one we just -- the second amended?

THE COURT: Whatever it is you think the settlement is today --

MR. PRINCI: Oh, excuse me, yesterday.

THE COURT: -- when was it signed?

MR. PRINCI: Yesterday. Pardon me, Your Honor.

THE COURT: And it takes the HoldCo election out.

MR. PRINCI: It does, Your Honor.

THE COURT: What other substantive changes does it make?

MR. PRINCI: It makes clear that the HoldCo is not the subject of the releases that are provided in the agreement. And further, the way it operates is that, to the extent that there is an adjudication by this Court after the filing of a proof of claim and overruling any objections thereto, to the extent there's an adjudication by this Court that any claimant does have a derivative claim against the HoldCo, based on whatever derivative theory, alter ego or otherwise, and it further provides that such claim shall be in the amount of the total allowed claim as that is set forth in the agreement. So it's 8.7, Judge, for your purposes.

The last thing it provides for is that 8.7 billion number, in that event, will be ratcheted down to -- in the event that there are any payments from either the RFC estate or

the GMAC-M estate on account of the 8.7 allowed claim against those estates. So it provides that there won't be duplication, if you will, with respect to that claim. Those are the principal terms.

THE COURT: I think the last thing I read in -- it's in Cleary's -- Mr. Moloney's report is -- and he refers to it in paragraph 5 on page 4. "The trustee has learned of an undisclosed allocation of AFI's cash contribution as between Residential Capital and the other debtors as part of the concurrently executed plan support agreement with certain RMBS investors. (The debtors have discussed this as integral to the RMBS settlement and the case more generally.) This secret deal which should have been fully disclosed affects the RMBS settlement, including potential alter ego claims and the release of Residential Capital contained in the original RMBS settlement." I'll end my quote there. The paragraph goes on.

Is there such an agreement?

MR. PRINCI: There's an agreement, Your Honor, but there's no undisclosed agreement. We don't know where that came from, Judge. So the plan support agreement which was filed -- it's a public record; it's been a public record since, I believe, day one of this case -- you know, makes clear in it and references expressly that one of the conditions of the parties is that the recovery to the institutional investors has to be kept in accordance with a certain waterfall that is part

and parcel of a presentation that was given to them by the debtors' financial advisor, FTI. That's no surprise to anybody. The committee's known that for a long -- everybody's known it. I don't know why the unsecured creditors' counsel is claiming that that's either undisclosed or that it's secret but it's neither.

THE COURT: Are there any other substantive changes in the RMBS settlement?

MR. PRINCI: No, Your Honor. So Judge --

THE COURT: Let me ask you some more questions.

MR. PRINCI: Please. Please.

THE COURT: I understand your position that in light of the amendment you don't believe that the discovery regarding alter ego or the HoldCo election is relevant. I'll hear from the other side and give you a chance to respond to that. Let me ask you this; this seems to me a fundamental question. Why does the RMBS settlement have to be resolved before the sale of the loan platform and the legacy loan portfolio?

MR. PRINCI: Okay. That's a critical question, Judge, and I have to make sure the Court understands this. Because there's been some obfuscation here that's really not helpful to the Court. In the scheduling order --

THE COURT: You know, you would do yourself a real service if you didn't accuse other parties of obfuscation. If you would just directly respond to questions that I ask, okay?

I'll tell you, you're not the only one who's done it in this case. I don't find it helpful. I don't appreciate when comments are made by filings about other -- that other counsel had made.

MR. PRINCI: Understood, Your Honor.

THE COURT: So restrict yourself to addressing specifically why this needs to be resolved before -- I mean, the auction is August -- October 23 and this hearing is supposed to be November 5th. So the auction is going forward without a resolution of the RMBS settlement and that's why I begin to ask myself, why does the settlement have to be resolved before the sale of the loan platform and the legacy loan portfolio --

MR. PRINCI: Okay.

THE COURT: -- are completed?

MR. PRINCI: So, Judge, the auction is going forward with the comfort and understanding that whoever's the successful bidder, that the proceeds from that sale will not be subject to an enormous potential cure claim, to a cure claim which would effectively cannibalize the -- potentially, the entirety of the proceeds. And that's --

THE COURT: So it's the cap on the cure claim?

MR. PRINCI: That's the key, Judge. That is -- that is an absolutely critical concession that these estates have gotten from the institutional investors with the consent of the

trustees. That cap, I believe, was estimated by the creditors' committee as being -- that the maximum, as I understood the creditors' committee's calculations on this when they proposed the specifics of it, I believe they informed me that they thought that that amount would be mo more, ever, than 200 million dollars. Around that number. And I'm not trying to pin it at that; it could have been a little more but around that number, okay?

As against -- as against, in the absence of a provision like that, the position of the trustees that you cannot, as we contend, sever the legacy claims from the claims that we're looking to have assumed and assigned. And if that issue is decided against us, I mean, these estates don't -- the trustees for the trusts will, effectively, either kill the sale or kill the net proceeds that go to the estates. So that's the critical element, Judge.

THE COURT: And the cap was agreed to in the scheduling -- the revised joint scheduling order?

MR. PRINCI: Yes, Your Honor.

THE COURT: And what is it that says that if the hearing doesn't happen by November 5th, their agreement to cap is gone?

MR. PRINCI: Oh, it doesn't say that in the order, Judge.

THE COURT: I didn't -- that's what I was looking for

and I didn't see it.

MR. PRINCI: No. It doesn't say that in the order, Judge. It just -- and, you know, it's Your Honor's order. I will just say that, you know, having --

THE COURT: So what do you base -- have you received a threat from the RMBS trustees that they will terminate any agreement to cap the cure claim if the hearing doesn't go forward on November 5th?

MR. PRINCI: I'll let Ms. Patrick, when she addresses the Court, speak for herself but --

THE COURT: Well, you can answer for yourself.

MR. PRINCI: Yes, Your Honor, but I understand --

THE COURT: Have you received a threat from the RMBS trustees that unless the hearing goes forward on November 5th they will withdraw their agreement to the cap?

MR. PRINCI: Not from the trustees; from the institutional investors who have said they will direct the trustees to do that.

THE COURT: Okay. Go ahead.

MR. PRINCI: So that, Your Honor, is the --

THE COURT: How many -- you have -- the institutional investors, these are the ones who agreed to the plan support agreement?

MR. PRINCI: Yes, Your Honor.

THE COURT: And -- all or some? How many of the

institutional investors have said that if the hearing doesn't go forward on November 5th, they will withdraw -- they will instruct the RMBS trustees not to go forward with the settlement?

MR. PRINCI: There are two agreements that we have but let me just say, the vast majority are contained in one agreement and the counsel for all of those institutional investors is the one who informed me of that.

THE COURT: Who's that?

MR. PRINCI: Ms. Patrick.

THE COURT: Go ahead.

MR. PRINCI: So Judge, I just -- I want to say this at the outset. If there's evidence that there's collusion -- you've --

THE COURT: Evidence is usually derived from discovery.

MR. PRINCI: Understood. And that's why, Judge, when we produced the documents which are -- by the way, there's a continuing reference about the fact that we've only produced the e-mails regarding settlement discussions for the attorneys. Well, we wanted to get them the ninety-plus percent of them or the ninety-eight percent of them. That's where you start. There's going to be a de minimis amount, we understand, if any, of any further documentation coming from the individual. This would be because they -- any of their communications were

either with us, so they're privileged -- but those people weren't the ones negotiating and having the communications with the other parties. But --

THE COURT: Have you produced e-mails from Mr. Cancelliere?

MR. PRINCI: I understand that we're collecting them. But so that Your Honor understands my point, take Mr. Cancelliere; it is our understanding that any communications that he had regarding this was with either the general counsel of ResCap or us. He wasn't the one who was interfacing -- except, you know, in meetings. But he wasn't interfacing in written form with the other parties. But in any event, we're going to get people that and then I don't think --

THE COURT: Are the debtors' directors relying on advice of counsel supporting their approval of the RMBS settlement?

MR. PRINCI: Yes, Your Honor.

THE COURT: Doesn't that waive privilege?

MR. PRINCI: We don't believe so and, you know, I would say this. These are very important and not simple issues to address and if this is --

THE COURT: I'm not going to rule on the issue now.

MR. PRINCI: Okay.

THE COURT: But it did -- that was a point raised in one of the responses and it did seem to resonate with me that

if -- you need to show that this settlement is fair, reasonable and in the best interests of the debtors' estates. And to the extent that it involves business judgment, there needs to be evidence to support that this was an appropriate exercise of business judgment.

If the lawyers were the principal negotiators but the people making the decisions were the directors, that's why I think it's a fair question to ask whether they're relying on advice of counsel in support of their decision to approve the settlement. If that's so, then without deciding, you know, specific communications, you're going to have a real problem if you're going to assert privilege with respect to communications from counsel that form any part of the basis for directors approving the settlement.

MR. PRINCI: Your Honor, I do not want to suggest to the Court that the debtors exclusively relied on the advice of counsel.

THE COURT: Whether they exclusively or in part. Once you acknowledge that the directors relied, in whole or in part, on advice of counsel, how is it that you propose to shield that advice from discovery?

MR. PRINCI: Well, maybe this is semantics and maybe this is substance. There are fundamental business issues that were the basis of the directors' conclusions to do the deals that are in front of the Court. I think there's, necessarily

at times, counsel that provides information, but I don't think their decision, Judge, was based on anything other than business information and that will all come out.

THE COURT: Well, look, if they weren't sitting in the negotiations, then they have to be relying on what the negotiators informed them, in writing or orally.

MR. PRINCI: Well, management, Judge -- I mean, management does provide to the directors business information upon which the directors exercise their business judgment --

THE COURT: Well, you already answered my question --

MR. PRINCI: Okay.

THE COURT: -- by saying acknowledging that they relied, in part, on advice of counsel and -- are you retracting that?

MR. PRINCI: Judge, what I'm concerned about is what Your Honor's really looking for. I believe that the fundamental decision is a business decision based on business information. I can't exclude the possibility that there is advice you get from attorneys. I just don't -- that's my issue, Judge.

THE COURT: Here's what's bothering me, Mr. Princi. The discovery cutoff is next week, okay? And none of these issues have been sorted out. You haven't completed document production; you haven't produced a privilege log. There may well be communications -- written communications that are

properly protected by privilege. They don't have a basis -- when I say "they", the people who are objecting don't have a basis to know that because you haven't completed the discovery, you haven't produced e-mails from management, you haven't identified on a privilege log which of the e-mails you contend is or isn't privileged. How is that all going to happen by September 24th?

MR. PRINCI: Okay. Judge, the one thing --

THE COURT: And --

MR. PRINCI: Yes?

THE COURT: -- they're taking depositions.

MR. PRINCI: Okay. So I want to -- for a moment because I want to answer Your Honor's present question. I want to separate depositions for a second because we do believe we have a sound proposal. Indeed, Your Honor, fundamentally, the committee has indicated that, conceptually, it agrees with this, and I'll explain that in a moment. We do believe we have a balanced proposal that will not prejudice any of the rights of the parties here, okay, and that will not put the debtors in a position where we have a sideshow to a sideshow becoming the main event, okay?

But let me just -- the narrow point, Judge, we are getting them the privilege logs but if the September 24th date is a problem, that can be moved back and the fact discovery date, Judge, can be made -- obviously, if has to be subject to

Your Honor's approval, but the fact discovery date can be made coterminous with the expert discovery. It had always been our preference -- and we pushed this; this was something in the negotiations we pushed. We want it stagnated (sic) because it's just easier on our brain cells. But under the circumstances, Your Honor, we would be prepared to move back the September 24th date to the end date for expert discovery.

The reason, Judge, on this point, that I don't think people are prejudiced is if people, Judge, believe when they review the information -- and they haven't done it yet so there's a fundamental prejudgment that eclipses all this. And I'm not trying to cast dispersions. It just happens to be the facts. But if after they actually review the information, they review the privilege log, they have issues, I think we can all accept, given how proactive people have been, they'll come back to the Court. And Your Honor always, if you believe that this no longer works at any time, you always can move back the hearing date.

THE COURT: Let me ask you three -- when will the debtors complete production of e-mails?

MR. PRINCI: Your Honor, may I confer?

THE COURT: Yes.

MR. PRINCI: Thank you.

(Pause)

THE COURT: Ms. Lovett, if you want to address it

directly --

MS. LOVETT: No, that's okay.

THE COURT: -- you can do that, okay?

MR. PRINCI: So Your Honor, information -- there'll be some information on this coming this week. The information that people are looking for, the documentation to the extent it exists with respect to --

THE COURT: The reason -- I really -- I ask this question -- yes, I -- to the extent it's a rolling production, that's fine. But I really --

MR. PRINCI: That's what I was trying to --

THE COURT: -- I'm very -- I want to be very specific and I want a specific answer, one that you have to live with. I want to know when -- the date when e-mail discovery -- e-mail production will be complete.

MR. PRINCI: Excuse me, Your Honor.

THE COURT: Go ahead.

MR. PRINCI: I need to confer with my client.

I've been informed September 28th.

THE COURT: Okay. The reason -- look, assuming that I'm prepared to move some of these dates, okay, this isn't going to be a death by a thousand slices, okay? When I ask you for dates, you better be able to live with them, okay? And that's why -- and I fully expect, assuming that the schedule is adjusted, that there'll be rolling production. But I want to

know -- it's a hard stop date when -- look, there's always a few pieces of paper that turn up. I mean, that's the reality of litigation. I don't -- I'm not -- that's not what I'm talking about, okay? They find a reference in an e-mail to some document that hadn't turned up and then you go look for it; that's produced after.

So you believe that e-mail production will be -- now, we're talking about the debtors, but I'm going to have the same question for AFI. E-mail production by the debtors will be substantially complete -- very substantially -- will be complete by September 28th?

MR. PRINCI: I want to double-check, Judge.

THE COURT: Yeah.

MR. PRINCI: Excuse me.

THE COURT: The last thing you want to do is, when we get to September 28th, I find out that there's some server that hasn't even been touched yet.

MR. PRINCI: So you'll understand by my answer that people are clearly listening to you this morning, Judge. October --

THE COURT: Well, maybe they were listening last week, too, but yet everybody seems to think something happened after September 11th.

MR. PRINCI: October 3, Your Honor.

THE COURT: All right. I'm crossing out September

28th. October 3. When will all other requested document production be complete? Again -- I don't want to -- I'm not talking about a handful of loan files that you can't find and you've asked them to designate some others in their sample. I'm talking about in reading all of the status reports, it certainly appears to me that there is additional document production, besides e-mails, that have not been -- for example, there was a reference in one of the responses to an e-mail that referred to attached spreadsheets and those haven't been produced yet.

MR. PRINCI: Okay.

THE COURT: When -- what's the hard stop date for the debtors' completion of document production?

MR. PRINCI: So, Judge, it's October 3. But just understand, what you referenced is how the problems come up. So if people are working with us -- and I'm not casting aspersions at all -- if we're working together towards a common goal, there will be things that will come up and it could be that they come up on October 1. So therein lies issue -- the loan files, for example --

THE COURT: I'm used to dealing with those issues.

MR. PRINCI: Okay.

THE COURT: Okay? I experienced those issues as a practicing lawyer. I understand that there're always things that come up, okay? But I don't want to hear, if the schedule

gets moved, on October 4th that I suddenly hear there are large swathes of documents that nobody has -- you know, haven't been produced, they're being reviewed, it'll be another week or ten days. That's not acceptable, okay?

MR. PRINCI: Judge, I hear you. We believe it's October 3. Obviously --

THE COURT: When's the privilege log?

MR. PRINCI: -- we're not talking about alter ego documents.

THE COURT: When's the privilege log? Same question. When will the debtor complete a privilege log?

MR. PRINCI: Not next week, the following week, which is the week of whatever that is.

THE COURT: What's the date? Let's -- I want real dates.

MR. PRINCI: By the way, that's not -- we're going to -- we're not going -- we'll do this in rolling fashion, but you're looking for a dead -- a hard stop deadline, when will we be completed.

THE COURT: Well, have you given them any privilege log so far?

MR. PRINCI: I do not believe so, Your Honor.

So on a rolling basis, Judge, to October 10. But again, on a rolling basis, Judge.

THE COURT: Okay. I understand -- I'm switching

issues now --

MR. PRINCI: Please.

THE COURT: -- that initially, at least, and it may still be a problem -- parties have raised an issue that documents that were produced initially weren't searchable. And you at least represented in your papers that that problem has been substantially cured? I mean, it doesn't -- look, to produce 500 -- you say you've produced 500 or the equivalent of 500,000 pages. If you produce 500,000 pages in a form that can't be searched, that's like throwing the needle in the haystack and saying oh, we got a trial November 5th, good luck, I hope you get through them. Oh, discovery cutoff is next week so you can't take any more depositions.

MR. PRINCI: Agreed, of course. I'm going to ask Mr. Clark, my associate, who's in the trenches on this --

THE COURT: Okay.

MR. PRINCI: -- and who understands the technology light years better than I do, to address that, Your Honor.

MR. CLARK: Good afternoon, Your Honor. Dan Clark from Morrison & Foerster on behalf of the debtors. We produced e-mails on Friday in PDF format. Those can be downloaded, printed, and they would obviously need to be loaded in to anyone's own search platform. That's --

THE COURT: PDF documents, if they were -- were they converted from text files or where they scanned images?

Scanned images aren't searchable, converted from text files, PDFs are searchable.

MR. CLARK: I believe they were converted from text files. And we provided searchable OCR, optical character recognition, documents on Monday at the request of one of the parties.

THE COURT: Okay. That's of all the documents you've produced now have been -- everything has been --

MR. CLARK: That is of all the e-mails.

THE COURT: -- produced in searchable form? Either OCR or PDFs that are searchable because they were converted from a text file and not an image.

MR. CLARK: I would say everything in the 9019 data room is either a native file that can be downloaded, an Excel file, or will be a searchable PDF. That does not apply to the loan files we produced to the UCC and to the trustees because those are handwriting documents that are not --

THE COURT: Right. I understand that.

MR. CLARK: -- usually produced in that form. Your Honor, any further questions?

THE COURT: Okay. Thank you very much, Mr. Clark.

MR. CLARK: Thank you, Dan. Your Honor, should I address further specific questions, obviously, if you have them?

THE COURT: I'm looking through my notes.

MR. PRINCI: All righty.

THE COURT: I'll ask Mr. Schrock or one of his colleagues this question, but let me ask it of you. What was the role of AFI and Kirkland & Ellis in the RMBS settlement negotiations?

MR. PRINCI: We discussed with Kirkland & Ellis the terms that were being negotiated of the RMBS settlement agreement.

THE COURT: Did either Kirkland --

MR. PRINCI: In a real-time basis.

THE COURT: Did either Kirkland or AFI have anyone present during negotiations?

MR. PRINCI: I'm sorry; say again, please?

THE COURT: Did either Kirkland or AFI have anyone present during negotiations?

MR. PRINCI: I believe -- I believe --

THE COURT: I don't know that -- whether these -- go ahead.

MR. PRINCI: I believe the answer to that, Judge, I -- from firsthand knowledge, I know the answer to that, like, right before the petition was filed is yes, because there was an associate at Kirkland & Ellis who we asked to be there just so that we get the document done, so he came to our offices, Morrison & Foerster's offices. And then prior to -- okay. And then prior to that, Your Honor, I wasn't involved, and so I'd

have to consult, but I'm being told, yes.

THE COURT: You identified Mr. Cancelliere, a mortgage risk officer, as being substantially involved in the settlement negotiations on behalf of the debtors. Was there any other person employed by any of the debtors who was substantially involved in the settlement negotiations of the RMBS settlement?

MR. PRINCI: Yes, Your Honor.

THE COURT: Who else?

MR. PRINCI: Ms. Hamzehpour.

THE COURT: Give me -- hang on; let me find -- I'm switching between the notes I prepared before and -- what is the name?

MR. PRINCI: It's Hamzehpour.

THE COURT: Could you spell it for me?

MR. PRINCI: I will in just one second, Judge. H-A-M-Z-E-H-P-O-U-R, H-A-M-Z, as in zebra, E-H-P, as in Peter, O-U-R.

THE COURT: And what is Ms. Hamzehpour's position with the debtors?

MR. PRINCI: She's general counsel.

THE COURT: And what was her role in the negotiations?

MR. PRINCI: She was one of our principal contacts, directives.

THE COURT: All right. Was there anyone else employed by any of the debtors that was substantially involved in the settlement negotiations?

MR. PRINCI: Mr. Ruckdaschel.

THE COURT: D-A-S-H-E-L-L or --

MR. PRINCI: R-U-C-H (sic) --

THE COURT: Yes.

MR. PRINCI: -- D, as in David --

THE COURT: Yes.

MR. PRINCI: -- A-S-C-H-E-L.

THE COURT: And what is his position?

MR. PRINCI: I don't know -- he's a lawyer. I don't know the exact title, Judge, but he is an in-house expert on securitizations. I can find out his title in just one moment, if I confer with the client.

THE COURT: Go ahead.

MR. PRINCI: Excuse me, Your Honor. I've been informed his title is counsel.

THE COURT: Somebody just added something to that or not?

MR. PRINCI: Capital markets counsel.

THE COURT: Anyone else?

MR. PRINCI: I'm sure -- excuse me one second, Your Honor. You're talking now about people who work for ResCap as opposed to outside advisors, correct?

THE COURT: Correct.

MR. PRINCI: Okay.

THE COURT: Well, you say "outside advisors". If

there are financial advisors who were substantially involved in the negotiations of the RMBS settlement on behalf of the debtors, I do want to know who they are, as well.

MR. PRINCI: Okay. That would be Mr. Nolan and Mr. Renzi, R-E-N-Z, as in zebra, I, from FTI Consulting.

THE COURT: Okay.

MR. PRINCI: Mr. Puntus, P-U-N-T-U-S, and Mr. Chopra, C-H-O-P-R-A, from Centerview Partners.

THE COURT: Anyone else?

MR. PRINCI: Those -- and I'm sure there are other people, Judge, but those are the principal people.

THE COURT: Okay. All right. Anything else you want to add now?

MR. PRINCI: Yes, Your Honor. So, I just do want to speak to the Court about a proposal we have, and why we think it's important for some sort of balance to be entertained by the Court, and it is as follows.

We believe that the thesis for the request for all this information is not well founded. The fact that we, prior to the petition date, took parties who were involved in the various agreements that we were executing and discussed these matters with them, is not per se evidence that there is collusion. You'd have sort of a double supposition: A, Ally owns you and therefore dominates you. You're exercising no independent judgment; your board is not exercising any

independent judgment.

And B, off the heels of that, when you negotiated with people you've been litigating with for -- indirectly -- for quite some time, or that you're adverse to, you purposely inflated the amount of the allowed claim. Now, while we don't believe that's evidence, but that's supposition, we've given people a lot of documentation to see if, upon their review, they can identify anything beyond supposition, something to corroborate that this was collusive in its nature.

And what we're asking the Court is this: let these people, who obviously have -- I mean, some of these people have already made a decision not to accept the settlement agreement. For example, MBIA has decided -- MBIA has told the trustees --

THE COURT: They had a different explanation for their letter, but go ahead.

MR. PRINCI: Yes, I saw that explanation; I'm just having some difficulty with it, and I know you're -- you don't want to hear my views when it's -- with respect to inferences that can be drawn. I don't understand how they were addressing duplication of efforts. That's not what the letter says. And the other thing is they told the trustees in that letter do not accept the settlement. They just flatly say it. They don't qualify it; they say don't accept the settlement.

By the way, FGIC also sent a letter to the trustees and FGIC instructed the trustees don't accept the settlement.

Now, I just don't know what all the rest of the information is going to do to change somebody's view --

THE COURT: But Mr. Princi --

MR. PRINCI: -- that they shouldn't accept the settlement. But --

THE COURT: -- whether this hearing goes forward on November 5th or on some other date, I have prejudged none of the issues. The only thing I'm determined to do is make sure that anyone opposing this settlement has a full and fair opportunity to present whatever facts that are relevant to the issues before the Court that requires in the first instance that they be given discovery of them.

I said early on, that I thought this was an aggressive schedule. You negotiated a schedule. The hearing going forward on the date that it's scheduled requires that there be substantial compliance. If dates are adjusted, either by agreement or by order of the Court, they'll be adjusted, but you don't get to decide -- with all due respect, or even less than that though, okay -- you're not the one who gets to decide what issues the objectors can present. They may go to present an argument, and I may rule that's not relevant. I may find some other basis; I may sustain your objection to the evidence. That's fine, but the objectors are going to have a full and fair opportunity to present their arguments. In an appropriate time; I'm going to set time limits for everybody on this

hearing, so no one should be expecting that they're going to filibuster a hearing. It isn't going to happen, okay. When I set timed trials, I set the timed trials, and everybody lives with it. It's still premature for me to do that, but no one should think that they're simply going to filibuster, okay.

MR. PRINCI: So --

THE COURT: So you're not going to be the one who's going to decide, okay. You may disagree with the Iridium factors. They may not be able to offer, at a hearing, evidence. You described it as their collusion theory. I'm not sure it has to rise to the level of collusion, but if that's the theory of their defense, they'll have an opportunity to try. And if they have evidence to support it, if it's relevant to one of the factors the Court has taken into account, the Court will hear it and consider it, okay.

But when I said at the last hearing, everybody's picked up and quoted, that I said your November 5th date is hanging by a thread, it still is, okay, because you file a piece of paper, your status report, saying, oh, here's all the things we've done. But when I start reading your chart, you know, I had question marks in lots of places down, because you didn't represent that all of that discovery was done. You come back to the 1,500 sample loan files, but until I asked you questions, you didn't deal with the e-mails, okay. E-mails, for better or worse, have become a major topic of discovery and

expense and burden on everybody.

Let me hear from the other parties.

MR. DONOVAN: Good morning, Your Honor. Daniel Donovan from Kirkland & Ellis for Ally Financial. Your Honor, you asked Mr. Princi five questions, and I want to answer those for you.

First you asked, who from AFI, if anyone, should be deposed? It would be Mr. Timothy Devine, chief counsel of litigation for Ally; that's one.

Two, you asked Mr. Princi when he would, and I assume you'd asked me, when would Ally complete their e-mail production. On or before September 24th of 2012.

Third, you asked when a privilege log would be produced. We're going to produce our initial privilege log September 28th, and plan to supplement that October 5th, and be done on that date, October 5th, 2012.

Fourth, you asked Mr. Princi, whether ResCap's production is searchable. Ally's is searchable. We produced as TIFFs with load files; we've heard nothing from the committee. They've been unable to search it. And I'm going to come back -- I hope they have searched the settlement negotiation documents we produced in July of 2012, but I'll come back to that.

Fifth, you asked what was Ally's role related to the RMBS trust settlement agreement. And I think Mr. Princi had it

right. We were kept up to date, primarily Mr. Devine, also, my colleague Noah Ornstein, from Kirkland & Ellis. We were kept up to date; we were interested, and we were kept up to date, primarily by Morrison & Foerster and others.

So I believe those were five questions you asked, but I wanted to give you Ally's response at the outset.

THE COURT: You gave me the date by which e-mail production will be completed. What about any other document production other than e-mails, electronic or paper?

MR. DONOVAN: And I'm putting those together, Your Honor. So I believe both --

THE COURT: Okay. All production.

MR. DONOVAN: All of our discovery, and just for the record, we have searched and are searching thirteen custodians, four of which are from Kirkland. The four Kirkland custodians were searched and produced back in July 2012, July 26th to be precise. And those documents were e-mails of which MOFO was on, Ms. Patrick was on, and others if we were CCed, if any of those four Kirkland custodians were CCed.

So when the committee's report last night said settlement negotiations that we were at least copied on -- I know they happened without us -- those have been produced. There's going to be some more, but they've been produced. And that's because, Your Honor, since June, the committee served 2004 requests, as you know, and at least three of them, if not

more, committee request 18 to 20, asked for the same information, not surprisingly. So --

THE COURT: And you say that was substantially done when?

MR. DONOVAN: From the Kirkland --

THE COURT: Yes.

MR. DONOVAN: July 26th is when we produced it. And later this week -- I hope to be done by Friday, but I gave myself till Monday under your question -- is we're going to get the rest of the business folks.

THE COURT: Okay.

MR. DONOVAN: And that's where we come out, Your Honor. We have no objection to the committee asking for discovery from Ally. We've produced it; we intend to. We don't think we particularly should be the focus, but that's fine. And that's why in our report last night, when we've been working with the committee, we asked, knowing we're going to come before Your Honor, for confirmation that there are no issues. And we got confirmation. And then in the status report, there were the two issues raised last night that I think I've given you the dates now.

THE COURT: Okay.

MR. DONOVAN: Your Honor, I don't know if you want to go through -- we can -- I know some other parties -- FGIC had some objections to our discovery. I'm happy to save that,

since you seem to be focused --

THE COURT: No, go ahead.

MR. DONOVAN: Okay. FGIC, Your Honor, as you know, if the co-chair of the creditors' committee. They're also a plaintiff against us in ten cases that are stayed by agreement extending the stay, okay. So we obviously have some different issues than with the committee. We told FGIC, just recently, we wanted to meet and confer; it didn't happen, but I believe it was passing between status reports and letters yesterday, that we would give them access to the material we're producing to the committee that's confidential.

Your Honor, under the protective order there's also a category called "professional eyes only", and that was negotiated obviously for a reason. FGIC is an adversary. We have serious concerns about giving them that, but we told them if we can get to an agreed order -- I think it would basically need to be a lawyer who's not going to be involved in any of the other litigation -- we're willing to give them that information. But that's a serious issue to us, Judge, because we are adversaries, and we don't believe we should have to produce such information, especially when we view some of their requests to basically get around the stay.

THE COURT: So Jones Day in paragraph 12 of their status report says "FGIC continues to be stonewalled in its efforts to receive discovery from another key party to the

settlement process, namely the debtors' parent, Ally Financial. AFI, remarkably, claims that it is not a relevant party to the settlement for discovery purposes," et cetera. So your response is you've -- you don't know what they're talking about.

MR. DONOVAN: Right. What we told them was, look, we think it's duplicative, Judge, but understanding we're coming before Your Honor, we said, fine, we're not going to fight this. We will give you what we're giving the committee, and this was either contemporaneous, or after they filed the status report, we had letters going -- and e-mails last night. We're going to give them that information.

THE COURT: Hearing dates tend to focus the mind; it does, you know.

MR. DONOVAN: It does, doesn't it? Yes. A hanging in the square. But what did happen, though, Judge, and this is --

THE COURT: So wait, let me ask you this.

MR. DONOVAN: Yes.

THE COURT: Have you reached an agreement with Jones Day as to what you will give and under what conditions you will give it?

MR. DONOVAN: We have, although the second part -- the first part is confidential. We're giving the committee -- we're giving that, so there's no need. The second part, we agree we're going to talk after the hearing. We tried to match

up before; we couldn't reach.

THE COURT: Okay.

MR. DONOVAN: And that is this category. And I don't think it's much for RMBS, but there is some, the "professional eyes only" material, and frankly, as my client has told me, they don't want material that shouldn't be produced or is somehow not producible on the FGIC cases that are being requested to be produced, but if we can reach an agreement where it's a separate lawyer looking at it, we're fine with that. So I think that will resolve most, if not all; they'll tell you.

THE COURT: What judge is the FGIC cases pending before?

MR. DONOVAN: Don't know, Your Honor. I'd have to check.

THE COURT: All right. Thank you.

MR. DONOVAN: So Your Honor, I believe that brings you up to date. So bottom line, Ally has no objection to the discovery from the committee that we believe remains; there may be some leftovers. And we will cooperate and proceed.

THE COURT: Okay. Thank you. Ms. Patrick?

MS. PATRICK: Yes, Your Honor. May it please the Court, Kathy Patrick for the steering committee investors who have -- are parties to the settlement agreement. Let me answer your questions that you put to Mr. Princi. Has there been a

threat? No, there has not been a threat, but the --

THE COURT: A promise, or what? I mean, Mr. --

MS. PATRICK: There has been a key observation that there were substantive concessions made by our trustees in consideration of a good faith effort on the part of everyone to meet the schedule for the hearing. We want this motion heard. As the Court observed at the very first hearing I attended, if these repurchase claims languish, the case can go into a meltdown. It's in nobody's interest for that to happen.

And having negotiated that settlement -- that scheduling order -- it's important that the Court know that when that order was negotiated, there was no mention of loan files, there was no mention of settlement communications or depositions of lawyers or anything else. And when that order was negotiated, the very day it was negotiated, the creditors' committee stood up in this courtroom and tried to walk it back and suggest that they were not going to meet it.

And so part of what our clients have to evaluate is whether the creditors' committee's continued effort to run this case the way they prefer by waiting for the examiner, by having all of this in a plan -- I know that --

THE COURT: I think I made it clear --

MS. PATRICK: I know that.

THE COURT: -- last week on the issue of plan negotiations that we're not waiting for the examiner report.

MS. PATRICK: Yes, Your Honor, you did.

THE COURT: On that or on this, okay. So to the extent that -- and I didn't really read that as -- that seems to have gotten dropped from what they're pressing.

MS. PATRICK: It --

THE COURT: But Ms. Patrick, there's an enormous amount of discovery and expert work and preparation that goes into having a hearing on the RMBS settlement. I don't underestimate the importance of the settlement to this case.

MS. PATRICK: Yes, sir.

THE COURT: Okay. My concern before last week, expressed last week, the reason I scheduled this hearing is, I'm not sure it's realistic to really think that this case is going to be ready for hearing on November 5th. I'm not prepared to say today that it's not, but --

MS. PATRICK: Yes, Your Honor. I --

THE COURT: -- from the standpoint of your clients who've entered into an agreement, and I understand the importance to them, having committed to this, that it go forward expeditiously and not languish --

MS. PATRICK: Um-hum.

THE COURT: -- if they want the agreement approved, it's in their interest to assure that there aren't these unnecessary diversions from dealing with it on the merits.

MS. PATRICK: Indeed, Your Honor. And to be clear, it

isn't as though the settlement agreement itself was entered in July. The settlement was announced in May on the first day hearing. The plan support agreement specifically referenced the allocation of -- pursuant to the waterfall, there is a precise provision in it that refers to two presentations of the waterfall concerning the allocation that was not a surprise to anyone. Creditors' committee was appointed soon after that. The scheduling order was entered in July, at the end of July. And we got our first request for settlement communications from the committee on August 27th.

THE COURT: Well, but here we are; we're in the middle of September.

MS. PATRICK: Here we are, exactly. But my point, Your Honor, is, having gotten that request on August 27th, we have not yet had an opportunity to talk to you about our position on settlement communications, and I want to be clear about it.

The debtors have agreed to produce the settlement communications. Ally produced all of the settlement communications on July 26th. The Court, in the hearing on the exclusivity point last week, made the point that settlement negotiations are not ordinarily discoverable in the ordinary course. Why is that? Because the evidence of whether negotiations are at arm's length is evident from the agreement itself. It is. And for our clients, this is a significant

issue.

We, unlike everybody else here, are trying to remedy this broadly across the market. We have two settlements pending: one here, one in Bank of America. We are negotiating with other banks. This morning we sent notices of default to Wells Fargo and Morgan Stanley. It is not insignificant to our ability to try to get relief for bondholders that have suffered billions of dollars of losses to be able to conduct settlement negotiations with the presumption of confidentiality that everyone expects. And so we have been clear with the creditors' committee and with everybody else that has requested them that we will not produce our settlement negotiations unless ordered by the Court.

We had conversations about that with the creditors' committee in August. We met with them on September 4th and told them that was their position. As recently as last week, we sent another letter to them asking them to tell us if they intended to raise this issue so that we could brief it to the Court. They acknowledged that we were entitled to notice so that we could brief the issue for ourselves, and we learned that they intended to raise it in an e-mail yesterday.

Now, that may be how they believe this is fair to raise this issue, but this is not insignificant to our clients. Uniquely among everybody here, we are prejudiced if our settlement communications are disclosed. Uniquely among

everybody here, we have other interests at stake, and uniquely, those interests are compelling, given that both Ally and the debtors have agreed to produce these settlement negotiations, and --

THE COURT: Isn't the cat out of the bag, once --

MS. PATRICK: Well, the cat is out of the bag, but the issue for them is, well, they might have overlooked something in their production, but we are in a circumstance where, for the sake of what we are trying to accomplish elsewhere, we think the holding of In re Lee Way (ph.) and the many other cases requiring that collusion be established by extrinsic evidence before settlement negotiations are made discoverable, is apposite here. It's entirely relevant. They now have documents, that in our view, they were not entitled to receive, settlement negotiations, and they've had them for over a month from Ally. They're in the process of getting them from the debtor, and yet on the basis of our refusal to produce the same universe of documents, they now want to kick the hearing date that we negotiated.

To be clear, our privilege log will be done on Thursday for all of the pre-settlement communications. All of our other production that was not settlement negotiations was completed on July 31st. But there is, Your Honor, a significant group of people who for their own reasons, including the creditors' committee, would prefer this hearing

to happen on the 12th of Never, because they have other interests. Everybody has their interests. I certainly have mine; I acknowledge that. But let's take MBIA as an example.

MBIA issued a subpoena, including a request for settlement negotiations, on June 15th. The Court will remember that hearing; we were here arguing. On July 6th, in correspondence with us, they agreed to defer that issue. On July 23rd, they sent a letter to the trustees instructing them, not only not to accept the settlement, but not to consider it. Now, we didn't find out about that letter until recently. But on September 13th, we sent a letter to MBIA saying, haven't heard from you; assume that you have no other issues. And they filed a response yesterday raising these issues.

THE COURT: Let me ask you --

MS. PATRICK: It is not question of not being proactive, Your Honor. We have produced -- in response to every request we have gotten, we have produced within the ten-day period.

THE COURT: Wait, let me ask you something.

MS. PATRICK: Um-hum.

THE COURT: Can you identify the person or persons on behalf of the investors who was substantially involved in the negotiations? Was there anyone other than their outside counsel?

MS. PATRICK: You're talking to her.

THE COURT: Okay.

MS. PATRICK: And so for our purposes, the question of deposing lawyers is particularly acute. Now, we have addressed this issue before. We've addressed the question of settlement communications before, and it initially came up while the Bank of America settlement was pending in federal court and then made its way back to state court. And in that context, we cited a number of cases that are familiar to the Court, as you've said, the Second Circuit law, which requires parties which want to depose lawyers to identify, not only that the evidence is highly material, but that there is no other source from which it can be obtained.

THE COURT: What are the other sources -- if the lawyers were the negotiators, what are the other sources from which the information can be obtained?

MS. PATRICK: Well, they have all of the written documents and e-mails that went back and forth; they have the drafts of the agreement; they have the agreements themselves; they have data on which the settlement was premised, the GSE repurchased data that the debtors produced. They have an abundance of evidence from which to assess the reasonableness of the debtors' conclusion that 8.7 billion dollars was a reasonable settlement to enter into with trusts that have already suffered 47 billion dollars of losses. So there is an abundance of evidence.

Importantly, Your Honor, there's a clear distinction in the case law. Every settlement does not make the negotiation of that settlement relevant. The back and forth of who said what to whom, is not presumptively relevant. Indeed, it's only rarely relevant. It's only relevant if there is extrinsic evidence of collusion. And notably -- notably, there is no suggestion by anyone that our clients or the separately represented Tal-Franklin Group, which has a different agreement, right -- their terms of their agreement preserve certain servicing claims that our clients did not -- engaged in any collusion with the debtors or Ally Financial with regard to this settlement. There is no evidence of that. There is no suggestion of it at all.

And as a consequence of that, from our perspective, the prospect of deposing litigation counsel to discover settlement negotiations -- recall, Your Honor, this is not the only place where we face MBIA and FGIC. It's not the only place where we face other noteholders who have interests that are --

THE COURT: See, the issues you raise seem to me to be quite different from depositions of employees of the debtors --

MS. PATRICK: Yes.

THE COURT: -- who happen to be lawyers, whether they were acting -- put aside there may be a relevant issue as to whether they were acting as lawyers or acting as

businesspeople --

MS. PATRICK: Um-hum.

THE COURT: -- where the debtor -- where the debtors' board, in making a decision to enter into a settlement has relied, in part, on advice of counsel.

MS. PATRICK: Um-hum.

THE COURT: That's a different issue than you raise as litigation counsel for the investors who negotiated the settlement.

MS. PATRICK: Yes, Your Honor.

THE COURT: So the fact that some lawyers may get deposed doesn't mean all lawyers get deposed.

MS. PATRICK: Although -- exactly, Your Honor. I agree with that. But even in the context of typical derivative litigation, special litigation committee, litigation, all of that, it's not customary to depose lawyers.

THE COURT: Look, I am -- I said this at the start. I'm not a fan of having lawyers --

MS. PATRICK: Um-hum.

THE COURT: -- deposed.

MS. PATRICK: Yes.

THE COURT: There are cases and there are issues where that necessarily is appropriate. When I'm told -- and that's been modified slightly -- that the only people who were involved in these negotiations were the lawyers, and you can't

depose any of them, that doesn't ring quite true to me. Okay?

MS. PATRICK: Sure. I understand that, Your Honor. And I completely get where you're coming from in that regard. But for --

THE COURT: Because even the cases that have been cited; is there another alternative? Yes. And I would look to is there some alternative other than deposing the lawyers if there's -- where the information can be obtained.

MS. PATRICK: Um-hum. Yes. That's right.

THE COURT: Okay. I understand your argument, Ms. Patrick.

MS. PATRICK: And then the --

THE COURT: Trust me, if -- you'll have -- if necessary, I will give you a chance to brief the issue.

MS. PATRICK: Thank you, Your Honor.

THE COURT: I'm not deciding it on the basis of status reports. Okay?

MS. PATRICK: Thank you, Your Honor. And, Your Honor, we are prepared to move forward. We have moved forward. We've met our deadlines. People -- this is, as you said, this happens often in cases where production gets a little off track. But ours is on track.

THE COURT: Well, yours is on track, but the cutoff of fact discovery is September 24th. And what I'm being told -- that was a cutoff of all fact discovery. And now I'm being

told that the debtor will complete its production by October 3rd and have a privilege log by October 10th. You can't have a cutoff of fact discovery when not all stuff has been produced. Okay? So the situation is going to require an adjustment to the schedule; which parts of it remain to be seen.

MS. PATRICK: Yes, Your Honor. And the only other points that I will make with re --

THE COURT: Mr. Princi seemed to be saying that you threatened to pull the plug on the proposed settlement if the hearing doesn't go forward on November 5th. And your answer to that was, no threat.

MS. PATRICK: No, Your Honor. My answer to that was, actually, the concession that our trustees made with regard to capping their cure claims and limiting their servicing objections was premised on the notion that the creditors' committee and others would work in good faith to try to achieve that schedule, would work hard, would put us in a position where we would have a hearing. And what has happened, Your Honor, from the moment that hearing was announced, is that the creditors' committee has been clear that it does not prefer this settlement to be resolved outside of a plan.

THE COURT: Well, I've already told you, that part is a nonstarter, okay?

MS. PATRICK: But the point I was trying to make, Your Honor, is that in that context, if you look at the timing and

scope of when they have served discovery, they have not used their time efficiently. For example, the settlement was announced in May. The scheduling order was entered at the end of July. We had informal conversations with them about the production of documents. They did not subpoena settlement communications until August 27th. We responded to them, and they notified us for the first time yesterday that they intended to raise it.

And so all I'm saying is, we are all trying to work very hard to try to get this hearing held on the calendar so that it can be resolved. But our position is very clear --

THE COURT: Let me make one or -- I'm going to stop you there.

MS. PATRICK: Um-hum.

THE COURT: Earlier in this case --

MS. PATRICK: Um-hum.

THE COURT: -- there was another issue about scheduling of hearings, and I basically told counsel for one of the other parties-in-interest that I was not going to allow their threats to hold this case hostage; that the schedule would be set appropriately. The Court is certainly prepared to move forward expeditiously.

But you haven't -- and I want to make clear -- I haven't heard a statement -- call it a threat or call it something else --

MS. PATRICK: No.

THE COURT: -- that if the November 5 hearing gets moved because there just is not sufficient time, I don't have a reason to question the good faith of all the parties who are seeking discovery. Okay?

There's a lot that has to be done to prepare for this hearing. There are experts who have to have access to all the documents before they can complete reports. There's a lot of things -- there are a lot of moving targets. Okay?

The one thing that I recoil at --

MS. PATRICK: Um-hum.

THE COURT: -- is anyone who takes the position that well, if this date doesn't hold or that date doesn't hold, I don't care what the problems are, we're going to take our cards and go home. Well, we'll see what happens if that happens, okay? We'll see what --

MS. PATRICK: Your Honor --

THE COURT: -- happens.

MS. PATRICK: -- we have not said that.

THE COURT: Okay. I --

MS. PATRICK: What we have said is if the creditors -- here's all we're saying; because it's not a one-sided conversation between us and the creditors' committee. If the creditors' committee, as they suggest in their pleading, believes they can take the benefit of the agreement our

trustees made without working hard to adhere to the schedule, that they can, having agreed to that benefit, stick their feet in concrete and say no, no, no, we just don't want to, that's not fair.

THE COURT: Well, that's not what's going to happen. But let me -- I want to make -- I want to get your position on a question that I asked Mr. Princi.

MS. PATRICK: You bet.

THE COURT: Because this was what seems to me to be the key question; and I think I know the answer to this, but if you have a different view, go ahead and tell me. The question I asked him was why does the RMBS settlement have to be resolved before the sale of the loan platform and the legacy loan portfolio? And I think the answer is, it doesn't.

MS. PATRICK: Oh, Your Honor, we believe absolutely that it does.

THE COURT: How is that going to happen? The auction is scheduled for October 23rd.

MS. PATRICK: The auction, right now, is going forward with the prospect that there is a settlement agreement in place that is subject to approval, that allows for the settlement to be made free and clear of the repurchase and servicing claims. The trustees are currently operating under an agreement that caps the cure claim at 600 million dollars. So we're in a universe where prospective buyers, just as they were at the

beginning of the case, are operating under the assumption that the RMBS claims are in a box and will stay there and will not present significant risk to them going forward.

It is our position -- it has been our position that in the absence of these agreements, it is not possible to sever the servicing going forward from the obligation of the seller, because they are one and the same entity. In each of these instances, they are one and the same. And so that's why it was very important to get these lined up in a row so that the settlement could proceed free and clear.

Our clients have an interest in that servicing sale, probably an interest overwhelmingly different than everyone else's, because we actually care about mortgage servicing over the long term. We also care about proceeds, because proceeds are what are going to compensate us.

THE COURT: And what is -- if the RMBS settlement is resolved in November versus resolved in January, what consequences flow from that?

MS. PATRICK: Your Honor, we believe that if it's a circumstance where all of the schedule is going to move back, the issue that we understand will be at play at that point is this: our clients have cure claims -- our clients -- the trusts have cure claims that our clients have concurred with the trustees, can be cured. That was a substantive concession that the estates wanted, needed, and that benefits other

creditors.

There was a quid pro quo for that. It's not a threat, but we're going to have to think about what rights we have to preserve for the trusts. Because if we're not going to get a circumstance where -- if we're going to be operating in a circumstance where the RMBS trusts' claims are treated as inchoate and subject to dispute, where other constituencies' claims are treated as concrete, we get less consideration. And I'll give you a perfect example of how that happens.

It is our understanding that although our trustees have not made a decision at all about this settlement, they are routinely excluded from creditors' committee deliberations about it, whereas, MBIA, which has already directed the trustees not to accept it, participates in those discussions. And so I understand that bankruptcy is a collision of interests, it's a fascinating collision of interests, but our clients cannot unilaterally disarm themselves, leaving themselves in a circumstance where cure claims that might have substantial value for the trusts, if the settlement doesn't get resolved, are compromised, but they don't get a hearing on the rest. That's not a threat. That's just a practical recognition of the reality of the circumstance.

THE COURT: Okay. Thank you.

MS. PATRICK: Thank you, Your Honor.

THE COURT: Mr. Eckstein?

MR. ECKSTEIN: Happy New Year, Judge.

THE COURT: Thank you, you too.

MR. ECKSTEIN: I'm trying to sort out where I think it makes the most sense to go. I think I'd like to first deal with Ms. Patrick's comments, because I view those, in some respects, as threshold issues.

I am -- the committee respects the goal that Ms. Patrick has in moving this forward swiftly; and the committee understands the Court's intention to move this hearing forward as quickly as possible. And this is not an attempt to delay or derail the consideration of the settlement. That said --

THE COURT: Well, that's a theme that's been echoed for quite some time, including in some of the status reports.

MR. ECKSTEIN: Your Honor, that doesn't change our view that this is such a pervasive settlement, and it has such overwhelming implications for the outcome of the case and a plan, that it would be preferable if this was dealt with in a plan.

I understand Your Honor's observations that that's not going to be the way this is going to be considered, and so be it. But it's correct that our view is that this should ideally be folded into a plan. And in fact, if you go back to the way this was structured by the debtor initially, they contemplated that this would be done in conjunction with a plan. And I think there's a lot of merit to that. But if that's not the

way the case is going to proceed now, we understand that.

The question -- the threshold question, however, that I think Your Honor raised and discussed with Ms. Patrick is, is there an absolute requirement that this proceed on November 5th. I believe that there's no question on all sides of this case, parties have been working very diligently to deal with these issues.

As Mr. Princi knows, as Ms. Levitt knows, and as Ms. Patrick knows, we have been talking about, for example, discovery going back prior to the entry of the scheduling order. And each of those individuals have personally requested me and my partners that we defer the filing of formal discovery with respect to the settlement process until we could: A, consider the substance of the settlement; B, deal with it informally. And we accommodated those requests.

And the reason that the discovery was served at the end of August was in response to requests by the debtors' counsel and by Ms. Patrick that we not proceed precipitously with those discovery requests. I was personally implored on multiple occasions to do that. I discussed this issue with the parties going back in July, whether or not this was or was not proper discovery. So to now suggest that we delayed --

THE COURT: Let me just stop you for a second. Okay? Let's assume that I conclude it's proper discovery. Okay? But so where does that take us now?

MR. ECKSTEIN: I'm getting to that, Your Honor. But I was just responding to the fact that somehow we sat on our hands. We didn't sit on our hands. This issue was --

THE COURT: Do I take it from the fact that you're pressing for discovery about the negotiations that you've concluded that the amount of the proposed settlement is not fair, reasonable, and in the best interests of the debtors' estate?

MR. ECKSTEIN: No. At this point, we have not made that conclusion, Your Honor. We are pressing with the discovery at this point in time, because we concluded that time was running out. The September 24th cutoff for discovery is in place, and we concluded, at the end of October (sic) that we could not wait any longer, and we had to serve the discovery requests so that there was ample --

THE COURT: You concluded at the end of August that --

MR. ECKSTEIN: End of August that we needed to serve formal discovery requests so that we can conclude this by the end of September. I thought that was the responsible thing to do.

THE COURT: Have you taken any depositions at all?

MR. ECKSTEIN: No, we have not. We have not -- Your Honor let's -- to cut through a lot of discussions today. The reality is, we have minimal -- right now, notwithstanding all the documents, all the comments, we have minimal substantive

production, as of today, with respect to the settlement process.

I heard we're going to be getting some. We're hearing names for the first time. The debtor has conceded, they haven't even searched -- they haven't even searched the businesspeople who participated in the negotiations. Even Ally, they suggest that they may have produced some documents in July from Kirkland, but they haven't produced any businesspeople e-mails to date.

THE COURT: Well, let me ask you this. The names that were specifically identified as having been substantially involved in the negotiations for employees of the debtors were Daschel (sic), Hamzehpour, Cancelliere, and then from FTI, Nolan and Renzi, and from Centerview, Puntus and -- I can't read my own --

MR. ECKSTEIN: Chopra.

THE COURT: -- Chopra. Those names haven't been identified?

MR. ECKSTEIN: We have not received e-mails from any of those individuals to date. And I don't believe --

THE COURT: Any of them?

MR. ECKSTEIN: Any of them. And, Your Honor, respectfully, for the debtor to stand and suggest that Mr. Cancelliere is the principal negotiator -- to the extent -- we just searched what we've received to date. We have found two

e-mails that has Mr. Cancelliere's name. I have not heard his name in this case to date. It's the first time I've heard his name in the case.

So he may be the principal person who negotiated the single most important settlement in this Chapter 11 case, but I haven't heard his name to date. And I haven't heard the CEO, I haven't heard the CFO, I haven't heard a board member's name, mentioned as having any involvement with this settlement.

Your Honor, it would be my experience that a settlement of 8.7 billion dollars that was the sine qua non for this case being filed, you would have expected that we would get -- that the debtor would have affirmatively produced documents from the files of the principal -- the leading principals of the debtor. That's not an unreasonable request. We don't have to articulate the individuals. The debtor should be coming forth with those. So --

THE COURT: I don't disagree with that. But I -- you know, I asked the question. Look, I made clear, I'm not a fan of taking depositions of lawyers. And so I pressed to find out whether there are employees of the debtors who were substantially involved in the negotiations, because it seems to me, in the first instance, those are the people who ought to be deposed, okay, about the negotiations, before you're deposing outside counsel.

That doesn't mean you don't get depositions of outside

counsel. But in the first instance, the issue of whether there is some other source for discovery other than the lawyers is -- that's a relevant inquiry by the case law. Okay? And that's why I asked the question. I'm distressed if, in fact, those people hadn't been identified to you before.

MR. ECKSTEIN: Your Honor, I concur with the view that we would prefer not to be taking depositions of outside counsel. That's not anybody's first choice.

THE COURT: And I think -- and I said this in response to Ms. Patrick's comments -- I think -- I agree with Ms. Patrick. I think she stands in a different position than the debtors. Ultimately the decision is was this an appropriate exercise of business judgment by the debtors in entering into the settlement. That may make other third-party discovery relevant. But the key -- the crucial inquiry is the decision by the debtors to enter into the settlement.

MR. ECKSTEIN: And we agree with that, Your Honor. And we have, I think, been as accommodating as possible in not precipitating these disputes prematurely. And --

THE COURT: Well, you waited until a week before the discovery cutoff to raise these issues. And then I don't have a lot of sympathy --

MR. ECKSTEIN: No, Your Honor. No, this was raised as early as July. The discussions with the debtor -- the debtor asked us to defer.

THE COURT: Yes, but nobody called my chambers. I made clear at the start of the case, if there's a discovery dispute, you call chambers if you can't resolve it. That hasn't happened. At the last hearing, when it was clear there were all these issues floating around, I scheduled this hearing for today. Okay?

MR. ECKSTEIN: Your Honor, as I said, we served the discovery requests in August.

THE COURT: Fine.

MR. ECKSTEIN: And there was no surprise. Everybody knows exactly what the issues have been. And there are no unknown issues in this case. There's a lot of communication and the issues have been on the table.

So the question right now is, when will discovery be complete? We understand -- I guess today we're told discovery will be complete sometime in the first week of October. And then the question is, who needs to be deposed. And we've gotten a variety of names. The one name at least to date that seems most substantive is Ms. Hamzehpour. Ms. Hamzehpour is the general counsel of the debtor. I don't know sitting here today, whether or not Mr. Marano or Mr. Whitlinger, for example, were involved in the negotiations. We have no reason -- we don't know. We haven't seen the documents one way or the other and nobody has told us. We have been told that Ms. Hamzehpour is the most senior person at the debtor who was

responsible for the negotiation of this settlement. And it would seem logical that notwithstanding the fact that Ms. Hamzehpour is an attorney, that if Ms. Hamzehpour was acting as the businessperson -- most senior businessperson responsible for the negotiation of the settlement -- it would be logical that we would want to take her deposition. There may be other depositions that are needed in connection with this settlement, and once we've --

THE COURT: Let me ask you this, Mr. Eckstein; have you given other counsel a list of the names of the individuals whom you wish to depose? It may change as you get more documents, but have you provided them with a list of names at this point?

MR. ECKSTEIN: Your Honor, unfortunately because we have not yet seen the documents, we have not been able to give them a reliable list. We could only give them the list after we --

THE COURT: Well you just told me with great confidence that Ms. Hamzehpour is -- that you want to depose her.

MR. ECKSTEIN: We've been told by the debtor that she was the most senior person involved in the negotiations. So that seems fairly obvious to me; if I've been told by the debtor that she's the person, that would be a logical person to depose. We have not heard -- we heard a couple of other names.

We've now heard Mr. Nolan and Mr. Renzi from FTI. Mr. Nolan and Mr. Renzi of FTI are not lawyers; to the extent they were involved in making analyses, they would be individuals I expect we would want to depose.

THE COURT: And I assume that Puntus and the name I can't read --

MR. ECKSTEIN: Puntus and Chopra --

THE COURT: -- Chopra.

MR. ECKSTEIN: -- I would imagine if they were involved in the negotiations -- and I'm learning that today -- if they were involved in negotiations, they're individuals we would expect to depose.

THE COURT: Well, you got a list coming out of the hearing today of people who I guess you want to depose.

MR. ECKSTEIN: Your Honor, I think that's one thing that we've accomplished, but the fact is, this is a long time in coming to just get to this. And without the documents, I think Your Honor knows better than I, that those depositions are not official.

THE COURT: Look, I don't know what documents you have and what documents you don't have. There --

MR. ECKSTEIN: Well --

THE COURT: -- obviously have been a lot of documents that are produced -- I don't know what hasn't been produced yet. So --

MR. ECKSTEIN: Your Honor, I'm told that we will be getting -- you heard what I heard -- we're told that we're going to be getting the documents by October 3.

THE COURT: Well, you're told that you're going to get a rolling production and that production will be completed no later than October 3. That was what I understood.

MR. ECKSTEIN: So I would imagine that several days after October 3, we will have been able to review the documents and we'll then be able to take depositions. There's no great mystery to how this proceeds. In terms of this discovery, I don't think it's any more complicated that we'll get the documents -- we probably need I would think a week to finish reviewing the documents -- and we can then begin taking depositions. And the depositions -- it depends on how many we'll take -- but I'm assuming that there'll be six, seven, eight depositions that'll be necessary in connection with the fact discovery.

So from that standpoint, Your Honor, depending upon how Your Honor wants to handle the hearing --

THE COURT: Let me ask briefly -- let me ask some other questions.

A subject of discussion at prior hearings has been the 1,500 loan file sample. And I understand -- I don't remember; the number escapes me -- other than some relatively small number that they say they can't produce the files for whatever

reason -- is it your intent to ask for additional files in place of the ones they haven't been able to provide you with?

MR. ECKSTEIN: If I may Your Honor, just one moment?

THE COURT: Yes.

MR. ECKSTEIN: Mr. Bentley tells me Your Honor, that we're going to rely on what we've received.

THE COURT: Okay. Let me ask you this; does your expert have the information he needs from the debtor to proceed with his or her analysis -- let me stop with a question mark.

MR. ECKSTEIN: Your Honor, the experts just received, in the last few days, the documents which were not in particularly great form.

THE COURT: I understand that.

MR. ECKSTEIN: And --

THE COURT: Do you know yet whether -- does your expert --

MR. ECKSTEIN: -- we --

THE COURT: -- have you talked to -- you or one of your colleagues discussed with your expert whether he or she has the information believed to be necessary to complete the analysis?

MR. ECKSTEIN: If I may just one moment, Your Honor?

Your Honor, we have a call tomorrow afternoon with the experts to get a download from the experts on the status. We believe that the materials that we're requesting from the

debtor are substantially complete.

THE COURT: Okay.

MR. ECKSTEIN: I will know after we consult with them tomorrow when they will be in a position to present a useful report to the Court. I don't know today whether or not it's realistic to have that done by the 8th of October; my sense is that would be extremely aggressive and it certainly doesn't provide sufficient opportunity to discuss it, and to discuss it with the clients --

THE COURT: Um-hum.

MR. ECKSTEIN: -- and to be thoughtful about it the way we would like to be. Obviously, people deal with deadlines, but the materials just came in last week, and so we're dealing with it as quickly as we can.

THE COURT: Remind me who your expert is. Have you disclosed the name of the expert or --

MR. ECKSTEIN: I don't think we've actually disclosed --

THE COURT: Then I'm not forcing you to do it now.

MR. ECKSTEIN: Actually, I think, Your Honor, I think we have; we filed the application.

THE COURT: You put a retention application in.

MR. ECKSTEIN: Yeah; Brad Cornell -- Brad Cornell and Moelis are the --

THE COURT: I know who he is; is he from UCLA?

MR. ECKSTEIN: He's from California, Your Honor; yes.

THE COURT: Yeah, right.

MR. ECKSTEIN: Your Honor, if I may make a couple of more other observations?

THE COURT: Yeah, go ahead; yeah.

MR. ECKSTEIN: So in terms of the expert and loan file analysis, I think that we are working extremely quickly right now to try to meet an aggressive deadline, which I think I could tell you that from our perspective, is not optimal -- regardless of when this hearing is, you know, when it's ultimately held in the context of the case -- I don't think that an October 8th deadline to submit an expert report from the committee is what we would like to do in light of when the materials came in. In terms of fact discovery Your Honor, I think it's pretty clear that September 24th, there will not be completion of production, and I think some accommodation is, by definition, going to be required in order to complete fact discovery.

The third item that I think we have to deal with is, we now have a new second amended RMBS settlement that deals with the HoldCo election. I think you'll hear from Wilmington, but the fact of the matter is, that each of these modifications are in fact significant. What we understand has happened is the original settlement -- and it's important to understand -- the original settlement provided that there was going to be an

allowed claim against the two OpCos. And HoldCo was going to get a release. And so in some respects the HoldCo creditors were not concerned about the amount of the claim; the only concern was really by the creditors at the OpCo levels. What we now understand is --

THE COURT: HoldCo is ResCap, LLC?

MR. ECKSTEIN: Yes; HoldCo -- it's the parent company of the OpCos that issued the senior unsecured bonds.

What now is occurring in the settlement is the HoldCo is no longer receiving release; that's material modification. And I'm told this settlement will provide that to the extent it's determined that the certificate holders or the trustees can assert a claim against the HoldCo entity based upon alter ego or substantive consolidation or the like, that the claim against HoldCo will be fixed at 8.7 billion dollars. So they now -- there's now an interest in the amount of the claim and there's also the uncertainty about whether or not there's going to have to be a subsequent litigation in the case about the amount of the claim, based upon assertions against HoldCo.

THE COURT: In light of Mr. Princi's description of the amended agreement, which you now have, correct?

MR. ECKSTEIN: We've seen a draft of it, I believe.

THE COURT: Well, he said he sent you the --

MR. ECKSTEIN: Well, we saw something last night; I don't believe it was --

THE COURT: Okay.

MR. ECKSTEIN: I don't think it's filed, but --

MR. PRINCI: It's filed, Judge.

MR. ECKSTEIN: It's final?

THE COURT: Did you give him a signed copy, Mr. Princi?

MR. PRINCI: He does have a signed copy.

THE COURT: Okay.

So what's the relevance of alter ego discovery and discovery with regard to the HoldCo election, in light of the amendment to the settlement?

MR. ECKSTEIN: Your Honor, I personally do not think that anybody wants to inject alter ego issues with the reasonableness of the settlement.

THE COURT: Do --

MR. ECKSTEIN: The problem is from the standpoint now of the HoldCo creditors, they may have to be contending with an 8.7 billion dollar claim --

THE COURT: And we may have a litigation at some point that deals with it. But in terms of the approval of the settlements, since it doesn't affect a release --

MR. ECKSTEIN: Well, no, the --

THE COURT: Mr. Moloney's getting excited here.

MR. ECKSTEIN: The problem -- and he'll speak -- the problem is, Your Honor, that if ultimately there is a

determination that there is alter ego liability, the HoldCo creditors might well want to assert that the liability is not 8.7; it should be 2 or 1 or 3.

THE COURT: They might.

MR. ECKSTEIN: They have a substantive interest in the amount of the claim.

THE COURT: I mean, just to cut through this; are you seeking discovery regarding to alter ego or the HoldCo election in light of the amendment to the agreement?

MR. ECKSTEIN: Your Honor, we asked for alter ego discovery and it's still pending. We obviously need to look at where this comes to rest. As I said, we saw this last night, Your Honor, and in fairness, I'm responding at 10 a.m. this morning.

THE COURT: Well wait, wait; time out, time out, time out.

You saw it last night but the check was in the mail but Mr. Princi or Mr. Lee previously told the Court that -- in writing and from the lectern -- that further amendment of the RMBS settlement was in the works that would remove the HoldCo election from the agreement. I questioned when, and it was a work in progress. But the fact that it was being negotiated, it was represented that there was -- I won't put the words -- I was told that it was being removed, so you've known that.

MR. ECKSTEIN: Your Honor, there were a lot of

different permutations --

THE COURT: I understand.

MR. ECKSTEIN: -- that were being explored --

THE COURT: All right; let me hear from other counsel.

MR. ECKSTEIN: -- and until we saw this, we didn't understand how this was going to come to rest.

THE COURT: Okay.

MR. ECKSTEIN: So the HoldCo election issue does change the dynamic in terms of how this affects the HoldCo --

THE COURT: It wasn't in there originally.

MR. ECKSTEIN: It was not in there originally.

THE COURT: So when the schedule was originally set there was no HoldCo election. They then amended it to include it. It created quite a storm; and they negotiated to take it out. So we're back where we started from.

MR. ECKSTEIN: We're not back where we started from, we're in a different place, but -- we don't have the HoldCo election, but we're not where we started from; there is no longer a release of HoldCo.

THE COURT: Okay.

MR. ECKSTEIN: Which is different from what the original agreement provided.

THE COURT: All right; let me hear from other counsel. Thank you, Mr. Eckstein.

Mr. Moloney, you were becoming quite agitated.

MR. MOLONEY: Well I didn't mean to be agitated, Your Honor; and happy New Year.

And I did read this agreement last night -- the signed agreement, and I'd like -- for the record, it's Tom Moloney on behalf of Wilmington Trust -- and they're representing a billion dollars of note holders at the Residential Capital, LLC level, which we sometimes refer to as the "HoldCo".

And Your Honor, I think it's important to note -- at the last hearing we had I didn't stand up because I thought we'd have a chance today -- I know deals change all the time in bankruptcy. But this deal materially changed in a way uniquely adverse to our clients, and in a way that makes the schedule, unless it's changed, uniquely unfair to our clients in the sense that --

THE COURT: How does the agreement as it stands today -- which I haven't seen yet -- differ from what it was at the start of the case?

MR. MOLONEY: It differs in two material respects, Your Honor. First, at the start of the case, there was a release to the ResCap level. So that -- in some ways, whether the claim was four billion or eight billion dollars, at the subsidiary level was a matter of a difference, because it's not going to be paid hundred cents to the dollar at either level. So at the HoldCo level, just representing the bondholders, that issue is not really germane as the agreement was originally

structured. And then it gets changed, and the way it gets changed, Your Honor, is a way that should give pause to the Court and to everyone regarding the original deal as well. Because this is the thirteenth chime that puts doubt on every single ticking of this clock. Because when the original deal was approved by the board -- and we just got these board resolutions within the last few days -- the original deal was approved by the board and said the board would have to approve if there's material change. The board did not approve the HoldCo election according to the interrogatories which we got on Friday; the board did not approve this change. So if you're looking for collusion --

THE COURT: Did they approve taking it back out?

MR. MOLONEY: I don't know if they approved taking it back out because the interrogatories were addressed at the state of play when it was in place. Immediately, when they changed this deal, we served them interrogatories; immediately when they changed this deal, we served our document request; immediately when they changed this deal, we served a motion to change the schedule because now these issues are in play.

The second material change is that -- and I don't know what their theory is -- best as I know, the teaching in the Second Circuit in the St. Paul fire case is that alter ego is in an estate claim, not a claim by an individual creditor. And an individual creditor can't settle -- and a debtor can't

settle an estate claim by giving alter ego claim to one creditor and not to all other creditors. So if actually they're creditors at our level, we're creditors at their level if there's really a resolution of an alter ego issue.

More materially, the arguments regarding alter ego really do not rely -- do not take you to the ResCap level. The arguments if there are any alter ego theory, take you exactly to AFI which is why this hidden waterfall deal -- when I said that the deal was a secret deal they didn't tell people about, was that they have two PSAs, and they seem fairly innocuous, and so we have a deal more or less consistent with this presentation, and they have two dates for presentation. And we looked through -- they're not public; these waterfalls are not public. Even though they want approval of these agreements, they have not made these waterfalls public. We look to find the two documents that were referenced in the PSAs; we discover they don't exist but their other two documents at different dates -- apparently everyone involved just made a mistake in the dates or they got re-dated, but there's not documents that actually relate to the dates in these two agreements. And in talking to the debtor and in talking to the representative of the RMBS, they both have a different understanding of what these documents mean, materially different understanding of what these documents mean, and both of them have a reading that is totally different than what I would read or what I think an

objective person would read --

THE COURT: Since we're talking about documents -- I don't know whether they exist, I don't know what they provide if they do exist -- how -- referring to them as "the waterfall documents" -- how do they bear on the approval of the RMBS settlement?

MR. MOLONEY: The reason they made the change and eliminated the release, which was material benefit to our debtor --

THE COURT: The release was a material benefit to your debtor.

MR. MOLONEY: To our debtor.

THE COURT: Yes.

MR. MOLONEY: The reason it made that change -- according to them in a cryptic footnote -- footnote 13 to the response, which I don't know how anybody who wasn't involved at inside baseball would understand -- but apparently a bond holder called up the lawyer for the RMBS creditors and said that don't think you're going to get the full 750 million dollars given by AFI; we're going to ask for a lot of it. At that point, she calls up the debtor and says we've got a problem here; I need you to improve my deal in order to improve my position vis-a-vis the bondholders. That's what that footnote says. And in fact, we asked the --

THE COURT: That's in the document that they filed

here? Thirteen --

MR. MOLONEY: Well, the last document they filed, footnote 13.

MR. PRINCI: The earlier status report, Your Honor, of last week.

MR. MOLONEY: Footnote 13. But in the -- we said, in our interrogatories, we said when did you start negotiating this change? The answer is they started negotiating a change on July 30, 2012. That date may resonate with Your Honor; that was the date they were in court setting the schedule. They apparently left this Court and then materially changed the deal. So how could they now complain that someone's -- why didn't people come up earlier; why didn't people object earlier? Well, they changed the playing field in a materially.

And the third way they changed the deal materially, Your Honor, is this fixed claim of 8.7 billion dollars, under various theories, it could be irrational for them to have an 8.7 billion dollar claim. If their fear of recovery is that it's RMBS that has the alter ego theory but not GMAC that has the alter ego theory, it should be, maybe, 3.7 or 2.7 or 1.7. If their fear of recovery is something else it could be some different number. They fixed an amount of a claim without any description what the theory of the claim is.

So we need discovery as to theory of the claim, whatever it is; HoldCo, whatever the theory of claim is they're

preserving, we need discovery as to how they changed the claim and why -- why is it less advantageous to our clients, and also Your Honor, our interrogatories ask them to identify all the businesspeople and all the lawyers who are involved in this negotiation and authorization. We now have a document which includes the names you were told and other names. They should all be custodians; it's less than half a dozen names.

THE COURT: They should all be custodians? I don't understand.

MR. MOLONEY: Custodians who have to produce e-mail discovery.

THE COURT: Well --

MR. MOLONEY: None of the businesspeople are custodians --

THE COURT: -- it doesn't make a difference who the custodian is; they need to produce the documents. Documents can be in possession of nineteen different people, it doesn't make them all custodians.

MR. MOLONEY: Well, Your Honor, as a pri --

THE COURT: They have an obligation to search the records of any of the debtors for documents responsive to the request, unless there's a privilege that's being asserted. You don't designate everybody as a custodian.

MR. MOLONEY: I agree; but in terms of e-mail searches, Your Honor, in terms of trying to make it less

burdensome to them, in terms of saying they have to have a targeted search of e-mails of a limited universe of people, they identified responsively, Kirkland & Ellis, thirteen people. I think if they looked at the list of people at the debtors they also get about thirteen people. Of those thirteen people, nine of them -- all of them -- all the businesspeople, everyone other than a few MoFo lawyers -- they have not searched for a single e-mail yet.

THE COURT: All right; is it --

MR. MOLONEY: Now, maybe they're going to search for all those e-mails and produce them by October 3rd. If that's their undertaking, terrific, we'll work real hard. We don't waste time. We have substantive problems with this.

THE COURT: Since I didn't pick up on the significance of footnote 13 in a document I don't have a copy of sitting in front of me, just tell me again, Mr. Moloney, what is the gist of that? What did you take away from the footnote?

MR. MOLONEY: What I took away from the footnote is that the RMBS creditors were concerned that their PSA waterfall might be upset as a result of the examiner's reports, as a result of claims that we might argue against AFI on behalf of the note holders and that either some of that 750 which they had hoped to go to them, or money beyond that 750, would go to us and not to them. And so they asked the debtor to change the deal.

I think the debtor was concerned that they had a PSA agreement with Kathy and not with our group, and that, therefore, if they accommodated that request, they would create a voting block at the parent-company level that would support their plan. So I think, putting it another way, it's collusion; putting it another way, we want to put some sunshine on something that doesn't look good, doesn't smell right, and it's hard to explain.

THE COURT: Okay. Make it really simple for me. What is it that you're seeking in discovery that you believe you have not received so far?

MR. MOLONEY: We would like them to produce discovery related to the HoldCo election, how it was arrived at and why it was changed, and why it's changed again, including the names of the people who were involved in the most recent change, who approved it and who negotiated it. We would like discovery as to the basis for the claim which they are now preserving and which they have now set an amount of at 8.7 billion dollars. And we would like to be sure that the e-mail productions they produce include the e-mails of all the people who they've identified in these interrogatories as having been involved in negotiation or approval of this deal, which is about thirteen.

THE COURT: Okay; thank you, Mr. Moloney.

MR. MOLONEY: Thank you.

THE COURT: Who else wants to be heard?

MR. SHORE: Good afternoon, Your Honor; Chris Shore from White & Case on behalf of the junior secured notes.

Let me kind of answer a question that Your Honor asked on footnote 13 and how we perceived it.

As secured parties in this case, we are nonetheless still focused on some key debtor boxes within the capital structure. When this deal was originally proposed, our view of the settlement, which is shared by many people --

THE COURT: Let me just stop you for a second.

Mr. Princi, I got this giant binder in front of me. Is the status report from the last hearing that has this footnote 13, is it in the binder?

Somebody have a copy of it?

THE CLERK: Sir.

UNIDENTIFIED SPEAKER: Your Honor, may I approach?

THE COURT: Yeah, please. I'll give it back to you. Want to make sure there are no secret notes? It's all in invisible ink, so it's okay.

MR. SHORE: Let me -- we don't -- we can do it without. It's all right.

THE COURT: Okay, go ahead, Mr. Shore.

MR. SHORE: We can do it without.

THE COURT: No, I mean, I -- Mr. Moloney talks about it as well, so I -- but go ahead.

MR. SHORE: We looked at the deal as follows: 8.7

billion is a huge number.

THE COURT: It's a lot of money.

MR. SHORE: It's a huge number in the context of what anybody was expecting RMBS settlements would be on putback litigation and the like.

From creditors' perspective at the main box, is it really didn't matter. It kind of worked for everybody. 8.7 billion dollar headline number is great for somebody who is trying to negotiate deals in other cases as they said they're doing. 8.7 billion dollar claim against small boxes is kind of ice in winter for debtors to agree to. The problem all began when they started applying an 8.7 billion dollar number at places where they could actually get a recovery. From our perspective, this settlement motion began on August 15th when the HoldCo election was put in.

Now, they have said no blood, no foul, we've removed the HoldCo election; but as has been pointed out to you, it's not a removal. ResCap, LLC is one of your fifty-one debtors. They are now proceeding with a motion that says we'd like you to allow an amount of a claim against us in the amount of 8.7 billion dollars; we just want to reserve for a later date the issue of whether we actually owe any of that money. That is a significant problem for us and one which we believe that the fiduciaries of ResCap --

THE COURT: Hang on a second. We've had this

continuing problem of the construction in JSA is impossible to deal with; I'm sorry.

Go ahead, Mr. Shore.

MR. SHORE: That is one which we believe a fiduciary of ResCap, LLC should respond to. To that end, we sent out last week very minimal document requests saying we want the board minutes of the debtors talking about the HoldCo election and the removal of the HoldCo election --

THE COURT: If they took out the HoldCo election but left the release of HoldCo, that would take us back to the way this started out.

MR. SHORE: That would take us back.

THE COURT: And then you wouldn't have a problem.

MR. SHORE: Correct. But we don't have that.

THE COURT: Yeah.

MR. SHORE: And I don't believe that anybody's going to go for, right. When someone starts -- I think footnote 13 -- I know I said I wouldn't refer to it -- means we got a lot of criticism -- someone got a lot of criticism -- for agreeing to a great headline number against some empty boxes, and they wanted to protect themselves from criticism by saying no, no, no, I've got an ability to get some of my claim against a real box.

THE COURT: Bear with me a second.

MR. SHORE: So I don't think -- maybe they will go

back to a situation in which ResCap, LLC and the other debtors get a release and the claims exist against the seller entities and the depositor entities. But that's not where we are. What we got was the agreement signed last night which leaves that in place. We've asked for board minutes and we've asked for communications with people regarding the HoldCo election and the HoldCo removal and these claims of alter ego. I don't want to get into the substance of the alter ego, I just want to know what people were talking about that they thought this was a good idea, we're going to allow a claim in amount, but just reserve the right to argue liability later, if the theory that people want to press is that the 8.7 number was an irrational number when one looked at recoveries in the case.

We've been deferred by the debtors on that, they've taken the position that we should just talk about this at some later date because again, they're taking the position no blood, no foul. We're expecting to get documents from them. We've asked for a 30(b)(6) deposition for somebody to talk about that because, of course, we don't know who, if anybody, was involved in the decision first to do a HoldCo election and then to remove it without getting a release.

THE COURT: Mr. Princi, can you answer that question right now?

MR. PRINCI: As to who gave the release?

THE COURT: Who made the decision to grant the HoldCo

election; who made the decision to take it out and remove the release?

MR. PRINCI: Your Honor, ResCap, LLC --

THE COURT: I -- a person.

MR. PRINCI: Off the top of my head, no, Your Honor.

THE COURT: Any of your many colleagues able to answer this question?

MR. PRINCI: Not instantly; but Your Honor, this whole --

THE COURT: No, I just wanted -- if you can't answer it --

MR. PRINCI: I don't. I can't answer it.

THE COURT: And none of your colleagues who are here can answer the question of who at ResCap, using -- who at the debtors -- made the decision to first amend it to add the HoldCo election, then to take it out, but also to take out the release?

MR. PRINCI: What I don't want to do Your Honor, is without double-checking, state an incomplete record for Your Honor. Certainly Ms. Hamzehpour was involved; it was taken out with board approval. But I can get you that information.

THE COURT: See, look, Mr. Princi, the one thing I have to say from Mr. Moloney and Mr. Shore, that didn't come across to me before -- and I guess it's because I'm dealing with a revised settlement agreement I don't have, I couldn't

compare it to one that existed before that I did see -- is that it does seem to me to be a material change in the business terms when you take the HoldCo election out but also take out the release. That, you agree, is a substantive change from what was initially presented to the Court?

MR. PRINCI: No, Your Honor, they misstated what the agreement says. So this entire thing is flawed, entirely; I want to clear it up.

THE COURT: Well, let me hear the rest of Mr. Shore; go ahead, Mr. Shore.

MR. SHORE: Let me address that, and I think they'll say well the original application was to allow an 8.7 billion dollar claim and it didn't specify against which debtor. I think that's what they're going to say.

Do they mean they came in with an application to this Court to allow an 8.7 billion dollar claim against every debtor in this case, regardless of whether they were involved at all in any RMBS activity? The rational reading of the agreement, and something that would have had to have been cleared up before Your Honor would have agreed, is exactly which debtors are getting claims of 8.7 billion dollars against them.

And I want to make this clear, because we have growing concerns about this issues; there are fifty-one debtor estates here. Your Honor had written on the issue of problems in the thorny situations that arise when one set of professionals and

management is trying to manage through these interdebtor conflicts. But when they file a status report -- this is from yesterday, paragraph 30: "The debtors and the parties can continue to focus on the primary task at hand, namely whether the 8.7 billion total allowed claim is in the best interest of the estate."

We're not here talking about the best interest of a fifty-one debtor, nonconsolidated estate. We're talking about whether it's in the best interest of each of the estates that are affected by this settlement agreement. The agreement that just came up is a settlement by a debtor box that we care about, ResCap, LLC. It is coming to this Court at this point saying please allow against me an 8.7 billion dollar claim; just reserve everybody's rights later to figure out whether that claim is going to be cut down or allowed in the sense that alter ego liability or some other basis for alleging that this debtor is liable for other debtors' debts exists. So that's what we're focused on.

THE COURT: But why isn't it appropriate for that issue to be deferred?

MR. SHORE: It is appropriate for that issued to be heard, but in the context --

THE COURT: No; deferred.

MR. SHORE: Oh, deferred?

THE COURT: Yeah. Why isn't it appropriate for that

issue to be deferred? The issue isn't being decided.

MR. SHORE: I'm not -- I want to talk to a fiduciary of ResCap, LLC, the person who made the decision as to why they're doing it. If in fact the explanation is because this benefits the other estates, it allows sales to go on in other estates, it allows other estates to cordon off their liability and reduce litigation, that is an inappropriate answer. Under Augie/Restivo, this Court has to look at each debtor action on the basis of the effect on that debtor estate. I suspect -- notwithstanding having said this and they're being able to prepare their witness ad nauseum with respect to this -- that the real answer as to why ResCap, LLC did this -- and kind of what you've heard today -- is to allow sales to go on at other debtor estates or to cordon off liability and litigation at other debtor estates that really doesn't provide a direct benefit to ResCap, LLC.

THE COURT: But why isn't this like any other reservation of rights? The issue hasn't been resolved as to whether there is an alter ego claim; if there is, against what entities, does it pass all the way up to AFI? I don't know. It's not deciding those issues.

MR. SHORE: I think about it this way. Assume the proof of claim is the complaint. What's going on here is the proof of claim, the complaint is I'm suing you for 8.7 billion dollars on these following theories. And the answer that's

coming to the complaint right now is I agree, that there is an 8.7 billion dollars of damages you've suffered; I just dispute all these other things.

THE COURT: Well, let me ask you this; if the language in the agreement were modified such that it's not only whether the claim exists against HoldCo, but the amount of the claim, do you agree that that would satisfactorily resolve your issue?

MR. SHORE: If people, and obviously Your Honor, is going to -- if that's the order that goes in, Your Honor's keeping an open mind about it and people want to have a trial about 8.7 billion dollars and a bunch of little boxes within the capital structure, okay; that's fine.

THE COURT: Look, I understand -- your point, if I understand it correctly, is that this agreement would fix any future -- in the event of an alter ego determination, this agreement would fix the amount of the claim against HoldCo at 8.7 billion dollars.

MR. SHORE: Yes.

THE COURT: Okay. And I understand the concern you're raising. If the agreement were further amended to make clear that the fact -- the existence of a claim and the amount of a claim are all reserved --

MR. SHORE: No collateral estoppel effect, no res judicata effect.

THE COURT: -- then you would be satisfied.

MR. SHORE: We'd be satisfied, but I'd still want the answer to why there --

THE COURT: Well, but you might get the answer but not right now. I mean, there is -- look, I want to make sure everybody gets their full and fair opportunity at this hearing, but it ought to be confined to the issues that have to be decided, okay? I understand the issue you're -- and Mr. Moloney's raising his finger because he's getting concerned again. I don't want anything sort of backdooring an issue; I don't want to be told later in the case when you approve the settlement -- if I approve the settlement -- the result of that is in the event of an alter ego determination, you don't get to decide how much the claim against HoldCo should be; it's 8.7 billion dollars by virtue of the agreement you approve. It may be that if there's an alter ego determination it should be 8.7 billion dollars.

MR. SHORE: It may be.

THE COURT: And nothing that I would determine now would decide that one way or the other. But I understand your concern about is this agreement trying to fix the amount of a claim just leaving the only issue as to whether alter ego applies.

MR. SHORE: That would be it --

THE COURT: Okay.

MR. SHORE: -- and it would spill over into numerous

potential issues in the case -- estimation for voting purposes, anything else like that where we're really talking about an 8.7 billion dollar number. If Your Honor is saying I can sit and I can have a trial, and I can hear 8.7 as an appropriate number against these other debtors but when it comes to that 8.7 translating itself into actual votes in a case or actual dollars of distribution, that it's going to be a fair game; then we're going to --

THE COURT: I understand your point, Mr. Shore; any other points you want to make?

MR. SHORE: No, Your Honor.

THE COURT: Okay.

Hold on Mr. Princi, there's a lot of people who want to speak before you.

MR. WOFFORD: Your Honor, Keith Wofford from Ropes & Gray on behalf of the institutional investors.

Just a bit of clarification about the statements about change to the agreement. The original agreement itself, Your Honor -- and everyone here is represented by sophisticated counsel -- provided that the settlement was between ResCap -- which is Residential Capital, the parent and its indirect subsidiaries, and that was defined as ResCap, and the entity giving the claim in the original agreement that was filed just after the outset of the cases was that ResCap, meaning the debtors, will provide a general unsecured claim of 8.7 billion

dollars.

So Your Honor, obviously everyone here has been concerned about notice and about accurately portraying what the debtor is doing. We endeavored, with the debtors, with the HoldCo election to clarify -- because clearly the only debtor mentioned in the original agreement as giving a claim was HoldCo, ResCap itself. We knew, in fact, that there would be questions that would come up about which debtors would and which debtors were not giving a claim. So rather than have that be a mess, when the settlement actually got litigated, we chose, after discussion with the debtors, to clarify that issue. The method of the clarification was in fact this HoldCo election. After discussion, frankly, about potential possibilities about how to make that clarification, the debtors proposed that, we negotiated it, and it was put into the agreement. As a result of the objections of many -- oh, by the way, when the HoldCo election was put in the agreement, it was made severable, as you may recall. That is --

THE COURT: I don't recall.

MR. WOFFORD: Okay.

THE COURT: Go ahead.

MR. WOFFORD: Well, it was made severable so that if people -- perhaps Mr. Moloney's clients or others -- objected to the HoldCo election, that it could be, if the debtors could not satisfy their burden with respect to that proposed claim,

it could be turned down by the Court without vitiating or throwing out the rest of the settlement. Because it was severable and because there was such a tumult that arose around it, when the debtors asked us would you consider removing it, we agreed to remove it. But we would not agree to the following, which is since the original settlement provided that there was the possibility and in fact a claim at HoldCo, in exchange for a HoldCo release, if the possibility of a claim or a claim being allowed was removed from the settlement, we said no claim, there's no consideration for that debtor, it is in fact as the Wilmington folks would call a preferred subcon, for other debtors to pay with their claim being granted for a HoldCo release, and we said fine, remove it; remove the claim, remove the release.

The creditor's committee requested, among others, perhaps with the debtors, that so as to avoid the possibility of having to re-litigate the size of the claim if alter ego liability was established, that we put in the provision that you will see shortly, that says in fact that if there is a HoldCo alter ego claim allowed, that that would be fixed at the already-settled 8.7 number.

THE COURT: So let me -- if there is a claim against HoldCo, what's the theory of liability of HoldCo?

MR. WOFFORD: Alter -- direct alter ego liability.

THE COURT: Okay. So does that necessarily -- if the

amount -- if this agreement provides that the amount of the claim against HoldCo is 8.7 billion, then don't I necessarily -- doesn't -- don't you all necessarily have to try alter ego now, because why -- are -- those parties-in-interest who would be very substantially adversely affected by an 8.7 billion dollar claim against HoldCo, aren't they entitled to challenge the alter ego theory before the Court determines that okay, it's 8.7 billion and we'll later hear -- I mean, isn't that so?

MR. WOFFORD: Our view is no, Your Honor, because --

THE COURT: Why?

MR. WOFFORD: -- you are trying whether the settlement amount of 8.7 billion dollars is reasonable. It does not establish whether or not there's any alter ego liability of the parent at all.

THE COURT: Well, I'd have to look at --

MR. WOFFORD: If they are in fact an alter ego --

THE COURT: Mr. Wofford, let me stop you.

MR. WOFFORD: Yes. Sure.

THE COURT: No, I disagree, because I have to look at whether -- what the basis -- I can't decide that a -- 8.7 billion is a reasonable settlement amount for HoldCo unless I examine, not decide the issue, but look at what -- the arguments and some evidence in support of and in opposition to the claim. I just can't take a flier on it and say because the

debtors say I ought to approve 8.7 billion against HoldCo, I'm supposed to do that. That's just not what the standard for approving a settlement is.

MR. WOFFORD: Well, Your Honor --

THE COURT: How can I decide that --

MR. WOFFORD: -- again --

THE COURT: -- it's above the minimum amount to determine it's reasonable if I don't at least examine the basis for the claim against HoldCo.

MR. WOFFORD: The reason, Your Honor, is because -- the formal reason is the order is not establishing the allowance of the claim. It's merely --

THE COURT: Well --

MR. WOFFORD: -- fixing the amount --

THE COURT: -- come on.

MR. WOFFORD: -- if it is allowed.

THE COURT: All right. So do you agree that if the release is removed that the agreement can make clear that the amount of any claim against HoldCo is reserved?

MR. WOFFORD: We were always comfortable with that position, Your Honor. Again, the fixing was at the best of the creditors' committee that reques -- and I believe the debtors also.

THE COURT: Mr. Eckstein's getting all excited now.

MR. WOFFORD: If they in fact take the position today

-- if everyone's taking the position today --

THE COURT: Let me --

MR. WOFFORD: -- in fact --

THE COURT: -- stop -- hold on.

MR. WOFFORD: Yeah.

THE COURT: Stop. Is there anybody here who wants to stand in opposition to clarifying this agreement to make clear that the amount of any claim against HoldCo would be reserved, as well as the alt -- the underlying alter ego issue?

MR. PRINCI: Your Honor, the debtors have a business judgment, and that business judgment goes to the fairness and reasonableness of 8.7 being the appropriate --

THE COURT: Could you answer my question?

MR. PRINCI: Yes, I'm trying to explain, Judge, because --

THE COURT: No, give me the bottom line and then I'll let you explain.

MR. PRINCI: The bottom line, Judge, is we think it would be bad for the ResCap LLC --

THE COURT: Okay.

MR. PRINCI: -- estate.

THE COURT: Alter ego is open for discovery. I can't go ahead -- if -- unless the debtors agree that the issue of the amount of any claim against HoldCo is reserved for later determination, then necessarily I have to be able to evaluate

the alter ego claim. You want to take that position, that's fine. Alter ego discovery is fair game for everybody.

MR. PRINCI: Your Honor, may I be heard, please?

THE COURT: Go ahead.

MR. PRINCI: Thank you. Judge, we think it's -- we want to make clear for the record -- because we are fiduciaries -- we want to make clear for the record what we think the impact of this is, okay? So we think it's not good for the ResCap LLC estate because, and this is why we did what we did in the second amended agreement --

THE COURT: Which I haven't seen and --

MR. PRINCI: -- I --

THE COURT: -- therefore -- I keep getting surprises, Mr. Princi, when you describe what it does, and then Mr. Moloney, and Mr. Shore. I hear very different things about what this amended agreement does. It really supports the committee's view that none of this should be happening right now.

MS. PATRICK: Your Honor --

MR. PRINCI: Your Honor --

THE COURT: No.

MR. PRINCI: -- I'd like to --

THE COURT: Sit down, Ms. Patrick.

MR. PRINCI: -- be heard. Okay. Your Honor, I have to respect people's ability to come to the podium and make the

allegations they do, but I need an opportunity to clarify the mistakes that have been made by people. And I'm going to try to do that.

We don't believe it's in the best interest of ResCap LLC's estate. That's the estate that Mr. Shore's clients have an interest in. Now, Mr. Shore's clients also have an interest in the operating company estates, okay, because they're secured. Their collateral is also at the opco level, all right, but that's the only estate that Mr. Moloney's clients have an interest in.

Now, independent of how they look at it, on behalf of ResCap LLC, we don't think it's in ResCap LLC's interest to leave it open. Why? Because we have done a lot of work as to what the appropriate amount, what would be fair, what would be reasonable to settle the underlying rep and warranty claims. So we look at this way. The rep and warranty claims arise because two parties are in privity of contact -- contract; the trusts and then the operating companies. We think 8.7 is a fair number for the rep and warranty claims there.

That -- our view on that won't change whether there is an alter ego basis or not.

THE COURT: Yes, but you capped the amount of the liability at 8.7 billion whether there's a claim against HoldCo or not. What -- if Mr. Moloney or Mr. Shore subsequently wants to argue a legal and factual basis why the amount of the claim

against HoldCo should be less than 8.7 billion, that's what they want the opportunity to do.

MR. PRINCI: Then, we will do that. If the institutional investors will agree, we will have no problem, Judge, entering into a further amendment and doing that, but I want to state for the record why we believe this is not in the estate's interests.

THE COURT: Okay. I'm -- what I'm telling you is if you don't want to agree --

MR. PRINCI: No --

THE COURT: -- that's fine, but the result of that is all discovery about alter ego is relevant to the issue of whether the settlement is going to be approved.

MR. PRINCI: I --

THE COURT: Okay?

MR. PRINCI: Your Honor, I hear you --

THE COURT: It's as simple --

MR. PRINCI: -- loud and --

THE COURT: -- as that.

MR. PRINCI: And I hear you loud and clear. And so if the institutional investors are willing to further amend the agreement, we will do that. But I don't think it's fair to the debtors, Your Honor.

THE COURT: Why -- okay. That's fine. If they don't want to, that's okay. That's their decision, and your -- and

the debtors' decision, okay?

MR. PRINCI: No, we're prepared to do that --

THE COURT: But --

MR. PRINCI: -- Judge.

THE COURT: -- what I don't understand, Mr. Princi, is if you or Ms. Patrick says -- or Mr. Wofford says no, we're not willing to change the agreement. We believe part of the consideration for this agreement is fixing the claim against the -- against HoldCo at 8.7 billion in the event of an ultimate alter ego determination. That's fine, but it makes the alter ego issue relevant to approval of the settlement.

MR. PRINCI: I --

THE COURT: It's not -- I'm not forcing you to do anything.

MR. PRINCI: -- I don't --

THE COURT: I'm just telling you what the price is if you don't agree.

MR. PRINCI: Your Honor, quite candidly, all I'm trying to do is just state for the record why we think the position that the -- that these parties who have an interest in ResCap LLC and what they want to do by undoing the deal, which we're happy to do, they're the -- it's, if you will, their money, but that doesn't change our fiduciary obligation. I want to state on the record why we did this and why we think is a mistake.

But that having been said, it's simple. To leave that open means you -- this -- that estate will face a plenary trial on the issue of whether the forty-five-billion-dollar potential claim that they will potentially assert --

THE COURT: Why forty-five -- isn't it capped at 8.7 billion?

MR. PRINCI: No, no. Judge, when you uncap it, I think you're talking about a --

THE COURT: No, time out. I -- what I understood, and you're saying the cap is gone, then you're probably better off going ahead and dealing with the alter ego issue now. I mean, if the maximum amount of the claim against any of the debtor entities is capped at 8.7 billion dollars, the issue then becomes which debtor entities will the claim lie against. What I've heard from Mr. Moloney and Mr. Shore is they don't believe the claim should lie against HoldCo, okay?

If the settlement purports to resolve the issue by fixing the amount, if -- assuming alter ego liability is established, that's one thing, in which case alter ego is a relevant issue for the settlement approval hearing. I didn't -- so that's why when you say it's forty-five billion, I didn't understand that unless -- if Ms. Patrick says --

MR. PRINCI: No.

THE COURT: -- no, it's either this or nothing, okay.

MR. PRINCI: I'm saying that's what --

THE COURT: Then go ahead and take your discovery -- everybody take their discovery about --

MR. PRINCI: Your Honor --

THE COURT: -- alter ego.

MR. PRINCI: -- that's what -- that was my -- that will be the risk that the LLC estate, by removing it -- but you know what, we're going to try to remove it --

THE COURT: Well --

MR. PRINCI: -- period. That's what they want us to do. The Court sees that also as sensible, so we're going to try to do that, and we'll know very shortly, I suspect, whether we'll have the agreement, because I suspect they're going to stand up and take a position.

THE COURT: If you don't --

MR. PRINCI: If they say that they'll undo it, we'll undo it. And there will be no -- there will be absolutely no agreement whatsoever by ResCap LLC in any way, shape, or form with the institutional investors, be completely --

THE COURT: There can be an agreement that makes it clear that the claim is capped at 8.7 billion dollars. I mean, otherwise go ahead with alter ego. I'm not telling you not to.

MR. PRINCI: No, no, no. I understand.

THE COURT: But you're telling me it's -- you were telling me that the HoldCo election and alter ego is not relevant to anything that I have to decide as part of approval

of the settlement. And what I'm hearing from Mr. Moloney and Mr. Shore is exactly this is why it's relevant.

MR. PRINCI: Judge --

THE COURT: Okay. Why don't you go confer with Mr. Wofford and Ms. Patrick?

MR. PRINCI: Okay, Judge. I'm sorry, but I need to be able to address to the Court the underlying fact --

THE COURT: No, you need to --

MR. PRINCI: -- that you accept --

THE COURT: -- go talk to them. I'm taking a ten-minute recess.

(Recess from 12:31 p.m. until 12:44 p.m.)

THE COURT: Please be seated.

Mr. Princi?

MR. PRINCI: Your Honor, what a difference a recess can make.

So we have some good news. And first, I do want to clarify, Judge. I was misunderstanding you, as my colleagues immediately yelled at me when we took the recess. So what I do understand and what Ms. Patrick understands the Court was asking to consider, we do think is in the best interests of the ResCap LLC estate. And so -- but I don't get -- what we've now agreed to -- what we're going to further amend the agreement to reflect, so I don't get that potentially wrong, I'm going to let Ms. Patrick put that on the record.

MS. PATRICK: Mr. Wofford walked away with my notepad, so I'll do it from memory.

THE COURT: You want to wait for Mr. Wofford to come back?

MS. PATRICK: Well, yeah. I have it.

THE COURT: We can wait for him to come back.

MS. PATRICK: Thank you, because I wrote it down very carefully --

THE COURT: Let's make sure we get it --

MS. PATRICK: -- to address the Court's concerns. Thank you, sir.

THE COURT: -- make sure we get it right.

MS. PATRICK: Thank you.

THE COURT: Go ahead --

MS. PATRICK: All right.

THE COURT: -- Ms. Patrick.

MS. PATRICK: On behalf of the steering committee investors, we will agree to take out the fixed amount of the claim against the holding company. All parties will reserve all rights with regard to the amount and substance of the RMBS trust's claims against the holding company. They file their proofs of claim. People can object to them on that basis.

But we will also agree that while we must prove the amount of the claim, any liability proved will be capped regardless of the evidence at 8.7 billion dollars, which I

believe was what the Court suggested. We think it was fine. It was always fine with us, so --

THE COURT: That's what I was trying to suggest.

MS. PATRICK: Yes. Well, we heard you, And I hope we got it right. I think that, in that event, Your Honor, should take the issue of needing to prove alter ego or anything off the table, because it reserves everything for another day, but gives the senior unsecured holders the benefit knowing that the --

THE COURT: All right.

MS. PATRICK: -- claim is capped at not more than.

THE COURT: Thank you, Ms. Patrick.

MR. MOLONEY: Your Honor, can I respond?

THE COURT: Come on, Mr. Moloney. What can you object to?

MR. MOLONEY: I don't. I think --

THE COURT: Oh, how about that?

MR. MOLONEY: Your Honor, I think this --

THE COURT: I'm sorry, I don't mean to tease. This is an important issue.

MR. MOLONEY: No, it is important, and I think Your Honor got us to the right place to take --

THE COURT: Just identify yourself for the record.

MR. MOLONEY: Tom Moloney for the record, for Wilmington Trust.

I think you got us to the right place on one of the three issues I raised, which is I think we don't need to pursue alter ego discovery at this time with the new agreement on the table.

However, we did have a release, and that did get changed. And it did get changed, we believe, for planned reasons, which does suggest collusion, which does go to the standard which the -- the Court -- Your Honor is going to have to follow and look at the overall agreement. And so we still need process discovery. And still, as a matter of public record, they should publicize what this waterfall is. Since they filed applications to assume these agreements, people should understand what it is they've assumed, otherwise you're going to have a replay of this whole store about I thought the deal was this; I thought the deal was that. Publicize it.

And Your Honor, I -- in terms of what the deal was --

THE COURT: I kept looking for footnote 13. I can't find whatever document --

MR. MOLONEY: It was their exclusivity filing, Your Honor. And -- you know, it was their exclusivity filing, where they --

THE COURT: Somebody have a copy I can look at? No?

MR. MOLONEY: I've asked for someone from the office to bring it here.

THE COURT: I can --

MR. PRINCI: Your Honor, can I approach with a --

THE COURT: Do you know what the ECF number is?

MR. PRINCI: The ECF number? It's docket 1371, Your Honor.

THE COURT: Okay. Well, that -- can I see the 13 footnote? What page is it on? I've had --

MR. MOLONEY: Your Honor, I have a paper copy. If I may approach the bench, Your Honor?

THE COURT: I got it on the screen. If you can tell me what page it's on.

MR. MOLONEY: I'll find it.

MR. PRINCI: Page 13.

THE COURT: Page 13.

MR. MOLONEY: It says it was a phone call from one of the holders who --

THE COURT: I'm going to read it. I have it on here.

MR. MOLONEY: Okay.

THE COURT: All right, Mr. Moloney.

MR. MOLONEY: Your Honor, if -- either this is the explanation in the pleading with the Court, or what someone stood up and test -- and told you a minute ago was the clarification of the original deal was the explanation, or there's another explanation which we still haven't heard. They're not consistent. And in terms of what the original deal was, I went back and looked at the motion filed on June 11th.

And in the first paragraph of the 919 motion filed on June 11th, says they're going to resolve this with an allowed claim of 8.7 against debtors' Residential Funding Capital, LLC and GM -- which is defined as RFC -- and GMAC Mortgage, G-M-A-C Mortgage. The first paragraph tells you how they're resolving this, then in paragraph 22, they tell the carve-out. There's no carve-out for this claim against ResCap. They changed the deal, and they're standing here today lying about it, and that's very disturbing, Your Honor.

THE COURT: You can tell me the deal's changed. You can't tell me they're lying about it.

MR. MOLONEY: Your Honor, their explanations that they've --

THE COURT: No --

MR. MOLONEY: -- given today are --

THE COURT: That, I don't want.

MR. MOLONEY: Your Honor, I won't do that.

THE COURT: I tried to make that clear earlier.

MR. MOLONEY: And I apologize, Your Honor, but I can say that the explanation that they gave you today, that this was -- that the deal didn't change is inconsistent with this motion. I can tell you the reason they gave you for the change is not consistent with footnote 13, which suggests that it was -- that footnote suggests this was part of a planned discussion. That conversation was with persons in this

courtroom now, who called up and said you're not going to get the 750 million dollars, or I think we're going to get some of it.

No one encouraged him to have this conversation. But that deal should just PSA, and this separate allocation agreement, which is a secret agreement, and which needs to be public, and we need to understand what it is.

THE COURT: Mr. Moloney, what I -- what is missing -- what I'm missing is why that's relevant to approval of the RMBS settlement. Any agreement regarding allocation or waterfall or any of that, there'll be --

MR. MOLONEY: Okay. I think -- Your Honor --

THE COURT: -- appropriate time.

MR. MOLONEY: -- if I can just take you back to the introductory remarks, the thesis that you heard from the debtors' counsel, who said the thesis for collusion -- as to which there's no evidence -- the thesis for collusion is that there was a linkage between the RMBS settlement and the plan support agreement. He said that was the thesis. He said there was no evidence of that, but the thesis was that there was a linkage.

We now have that the first time that the RMBS creditors think they're not getting the full benefit of the PSA agreement, they change the settlement agreement. That shows that there is a linkage now. Now, does that show that there

was a linkage in the very beginning as well? Maybe yes, maybe no. But that's why we need a discovery into the process of how the sausage was made, how the settlement was done, what -- who was present, and who -- and the fact that they approved this amendment with no board representation, the fact that there were no business people involved; that you have just a -- you have an ability for the lawyers for AFI to speak to the lawyers for ResCap and for AFI to pull strings in this -- in the way this deal is being done, without any kind of business person in the middle or any record, that's the inference I'm drawing from this record.

Now, it may not be -- I may not be able to show that, but if I do show, then when you go to approve this settlement, you're going to look at not where it meets the lower standard of fairness, which is the very deferential WT grant standard. You're going to look to wherever it's intrinsically fair. That will be the -- and that's how it will bear directly on that hearing. The standard you apply is if there was business judgment and if there was an arms length agreement, then there's a very, very generous standard long established in this circuit to approve settlements.

If in fact you do not have business judgment, and if in fact it's not an independent process, then you apply a different standard.

THE COURT: Who do you believe this so-called secret

agreement is between?

MR. MOLONEY: Your Honor, I think the thesis was fairly --

THE COURT: Just tell me. You're being specific. You think there's a secret agreement. Who do you believe it's between?

MR. MOLONEY: I believe that the -- AFI has reached a deal here, essentially, with the -- with the debtors to give a large claim at the operating company level, which doesn't cost them any money, in return for their release under this PSA agreement. And that agree -- I think they're paying 750 million dollars for that, and I believe there's a secret allocation of that 750 million dollars, which we've never been told about and which, if they're forced to become public about, there's going to be a disagreement about. That's what I believe.

THE COURT: Thank you, Mr. Moloney.

Before Mr. Princi speaks, Mr. Shore, do you want to be heard again? Let me ask you, are you satisfied with the -- what Ms. Patrick described?

MR. SHORE: I think there's going to be -- have to be some work around the language when we see it. I'll ask them to put some things into the agreement, because, obviously, we're going to need to have a third amended agreement to be brought to the Court.

Let me just amplify two things. I've got maybe a little different theory, and not involving secret agreements or anything else. 8.7's a very big number. I think it had as much to do with the debtors' stated concerns all the time. We've done a lot of work, and we think 8.7's a reasonable number, as much as it had to do with it was a number that they could have attached, get some empty boxes that would satisfy people for distribution purposes, but would have other benefits for different people in different cases. It was a number that was workable, not necessarily the number --

THE COURT: But, we'll ultimately find out --

MR. SHORE: -- that they predict --

THE COURT: -- whether the number is --

MR. SHORE: Right.

THE COURT: -- appropriate or not.

MR. SHORE: Right.

THE COURT: Okay?

MR. SHORE: So that's the discovery. From testing the theory -- and getting back to what we're here to for today -- with respect to discovery, we think we're entitled to discovery at the ResCap LLC board level of the original deal, the putting the HoldCo election in, taking the HoldCo election out and whether the board has been consulted with respect to some of this stuff today. I don't know.

I think we're entitled to do that. We've asked for

the minutes. We've asked for communications between ResCap LLC and a host of people regarding those issues. We think we're entitled to that. We think after we get those documents, we're entitled to either a 30(b)(6) witness or to the extent we find that somebody's fingerprints are at the board level, we'll ask for a specific person. But for the purposes of testing the theory about what's going on at ResCap LLC and the interface between the number, plan support agreement, AFI release, that -- in order to test that theory, we're going to need that discovery.

To date, the debtors have said we're just going to defer it. We think it's totally irrelevant. We don't want to give it to you now. We're at the end of the discovery. It's not a lot. They should have produced the board minutes in any event with respect to things --

THE COURT: That --

MR. SHORE: -- that have gone on at --

THE COURT: Let me just stop there. Producing the board minutes. Should, must be done. That's got nothing to do with anything else.

UNIDENTIFIED SPEAKER: It's done.

THE COURT: Okay. That -- okay.

MR. SHORE: And then communications between ResCap LLC and different parties, and this gets again to that issue that the -- we're apparently not resolving today, which is if

there's a communication between a ResCap attorney and the institutional investors' lawyer with respect to what we are doing about the HoldCo election, whether that's privileged or not. I don't think it is. I think if the lawyers are negotiating it, it should be produced. They're going to do what they're going to do with respect to that.

They're going to schedule it in a privileged log, and I guess we're going to come back to Your Honor later to say that -- for Your Honor to determine if the -- if there was a statement yeah, but without the HoldCo election, we're pulling our PSA, whether that's a privileged communication or not. Okay, I get we're not going to do it today, but what we need to establish today is that we're not going to be told none of that discovery is relevant for the purposes of this motion.

THE COURT: All right. Anybody else want to be heard? Let -- hold on a second. Go ahead.

MR. ELLENBERG: If the Court please, Mark Ellenberg, Cadwalader, Wickersham & Taft, on behalf of MBIA.

Your Honor, I rise just to make two points. First, MBIA has not --

THE COURT: You didn't really mean it when you said never, under no circumstances should you ever approve this settlement?

MR. ELLENBERG: It's not what we said, Your Honor.

THE COURT: It's pretty close.

MR. ELLENBERG: It's not, Your Honor. And you were provided with the entire letter.

THE COURT: Okay.

MR. ELLENBERG: What we said was --

THE COURT: Looked like the entire letter.

MR. ELLENBERG: -- what we said was -- and we've clarified with the trustee since, what we said was do not charge our trusts expenses for your consideration of the settlement. And the reason that's what we said, Your Honor, was because we are the real party-in-interest in those trusts.

Ms. Patrick's clients and Mr. Talcott's clients have not absorbed a single penny of damage --

THE COURT: Tell me, Mr. Ellenberg, the letter that the debtors attached to their status report, which is a one-page letter; you're saying that's not a complete letter?

MR. ELLENBERG: I'm sorry. It -- I didn't realize they attached the letter --

THE COURT: Well, they did.

MR. ELLENBERG: -- Your Honor. I read it on my iPad. I only saw the --

THE COURT: They did. They --

MR. ELLENBERG: -- quote.

THE COURT: -- attached --

MR. ELLENBERG: Okay.

THE COURT: It's a one-page letter. It bears a

signature of -- for David --

MR. ELLENBERG: David Glehan --

THE COURT: -- Glehan.

MR. ELLENBERG: -- Your Honor. Yes. And the --

THE COURT: And you're saying that's not a complete document?

MR. ELLENBERG: It is a complete document, Your Honor. And read in its entirety, what it says is --

THE COURT: I did it read it. It's only two paragraphs long.

MR. ELLENBERG: Okay. It doesn't say we're opting out. It says we will make the decision, not you. And that's because we have the right to make that decision --

THE COURT: When it says "We hereby instruct you not to consider or accept any settlement or compromise offers relating to any claims that may belong to the above referenced trust" and it goes on from there.

MR. ELLENBERG: It does go on, Your Honor.

THE COURT: That looks like pretty clear language.

MR. ELLENBERG: But, Your Honor, it goes on. All right, the point is we will give them an instruction at the appropriate time.

Your Honor, if I may?

THE COURT: Go ahead.

MR. ELLENBERG: No investor has suffered a penny of

loss in the trust that we've insured. There have been lots of losses; over one and a half billion dollars worth, and we've absorbed every penny of those losses in our trusts, okay, because we are paying those claims pursuant to our insurance policies. Under the indentures and the insurance agreements, okay, that A, subrogates us to the claims of the investors. And so when Ms. Patrick talks about the claims she could bring in connection with the sale, for example, in our trust those are our claims. And under the indentures, as we read them, we have the ability to direct the trustees to take action with respect to litigation and, we believe, with respect to the settlement.

We have not yet directed them. We will at some point. And we have genuinely not decided what position --

THE COURT: What does that have to do with --

MR. ELLENBERG: -- we're going to take on this subject.

THE COURT: What does that have to do with scheduling -- with discovery --

MR. ELLENBERG: Your Honor, I just assert -- I didn't bring up the subject, Your Honor. I just want to make the record very clear.

THE COURT: It's late. I've got a 2 o'clock calendar. What does that have to do with setting a --

MR. ELLENBERG: Okay. The --

THE COURT: -- discovery and trial schedule?

MR. ELLENBERG: So let's talk about that, Your Honor. I think the key question was your question of why does this have to be done before the 5th. Why does this have to be done before the sale? There is no reason. There is an agreement that the trustees entered into that capped the claims, and that permits these sales to go forward.

Now, either there's a threat that if the schedule changes somehow they'll get out of that agreement that's embodied in an order, and they're trying to hold the sale hostage, or they're not. So let's get that clear. But if the sales are not being held hostage, I don't know why we are trying to turn ourselves into pretzels to deal with the schedule.

The settlement is still moving around. And if the debtors made every single commitment they promised to make today -- which would be astonishingly good performance on their part -- we would still be trying to squeeze ourselves into a straw when we really need a fire hose.

THE COURT: Okay. Anything else?

MR. ELLENBERG: I mean, why are we doing this?

THE COURT: Okay. Any other substantive points you want to make, Mr. Ellenberg?

MR. ELLENBERG: Your Honor, you read our points, and I won't repeat them. Thank you.

THE COURT: Thank you very much. Anybody else who hasn't spoken yet want to be heard?

MR. WYNNE: Your Honor, it's Richard Wynne from Jones Day on the phone for FGIC. If everyone in the courtroom's done, I just wanted to speak for a minute.

THE COURT: Go ahead.

MR. WYNNE: Thank you, Your Honor. I apologize for not being there.

I'd really just like to make a few very short points. First, with respect to AFI, that's fairly easy. Effectively, only after our status report did we get the letter, or I think they crossed right at the same time. So I think with AFI we should be able to work out an agreement and get a production from them, so I don't think there's any issue there. But the fundamental issue that we tried to address in our status report was that we did very timely serve discovery on July 13th, I think, was the first date. We tried hard to work with the debtors. We had very serious delays. We've been aiming to a November 5th hearing date. We hired our own experts, we worked through their database, we told them in a timely way what the issues were with the database -- and they were considerable, as shown in our report. The production was very deficient.

With respect to Ms. Patrick's harped point about good faith, at least (indiscernible) and what we've observed from other people, we've exerted an incredible amount of effort to

try to make those deadlines, and it's simply proven impossible for all the reasons that you've heard. You know, just today Mr. Princi just said that the debtors spent a considerable amount of time analyzing and dealing with the rep and warranty claims. Well, that's the essence of what we wanted to see. This is a monumental claim that's going to very, very seriously impact this case. And the only thing that we saw with respect to internal memos, or e-mails, or analysis was on Monday, I think it was, they uploaded into the database a couple of pages of a board presentation, and it's sometime in May before they signed the agreement that dealt with that. We wanted to see those internal e-mails and analysis; they just haven't come and we don't know when they're going to come.

The last point I'd like to make with respect to that is on the sales linkage. As far as we can tell there's no provision in the scheduling order that gives the RMBS trustees the right to now change that agreement. And Your Honor made clear in that July 31st order it wasn't really just scheduling; in fact, they had to change the title because it was a substantive provision that people agreed to. But there was nothing in that order that required that the Court rule on the RMBS settlement motion before the November 19th sale hearing. There was nothing that said that Your Honor had to approve it or the sales couldn't go forward.

THE COURT: November 5th.

MR. WYNNE: Nothing -- excuse me, Your Honor. Well, the sale is November 19th --

THE COURT: Yes.

MR. WYNNE: -- the hearing. But there was nothing that said that the RMBS hearing couldn't be continued from November 5th if Your Honor needed more time. There was nothing that said that Your Honor was going to rule on November 5th or before the November 19th sales. So I think that there's no provision that we're aware of that would allow them to now back out of that. And in fact, the RMBS trustees have stood up in court I think the first time this was raised, and said that the institutional investors in fact cannot direct them to take action. They can direct them to consider the settlement, and under the schedule we have the RMBS trustees are going to first consider what to do and exercise their own fiduciary judgment after this Court approves of settlement, if it does. So I think the sale is really a red herring.

Your Honor, that's it. Unless Your Honor had any questions.

THE COURT: Thank you very much.

All right. Anybody else on the phone or in court wish to be heard? Mr. Eckstein, and then I'll give you the --

MR. ECKSTEIN: Your Honor, if I may before Mr. Princi --

THE COURT: Go ahead.

MR. ECKSTEIN: I just wanted to, if I can, try to return very briefly to the scheduling issues, which I think were the initial subject. I think the HoldCo election discussion really just indicates an example of the documents and the discovery that are needed. Your Honor, as we look at this process where we are today, the documents regarding the settlement and the negotiations and items pertaining to the reasonableness of the settlement are approximately one month late. As we see it, Your Honor, there's a need to push the 9/24 fact discovery deadline by approximately thirty days.

The scheduling order gave the committee and other parties approximately three weeks from the conclusion of the discovery deadline to file an objection. I think that's a relevant date for the Court's consideration. As we see it, that date right now as we're looking at it needs to be pushed ahead.

THE COURT: I'm sorry. Which date?

MR. ECKSTEIN: That the date to file the objection. Right now the committee --

THE COURT: Right now it's October 15th.

MR. ECKSTEIN: October 15th. As we see it, Your Honor, that date needs to be moved out. And I'm not dealing with the impact of the sale right now; I think that's been discussed. We're simply looking at the schedule, Your Honor. We believe that this schedule requires approximately a thirty-

day extension of the discovery deadline. And we think that the deadline for filing the objection of October 15th needs to be moved out to the middle of November.

And, obviously, Your Honor, that has impacts on the schedule. As we're looking at the loan file production, that was approximately two weeks late, and we would expect that that deadline for the filing of the expert report should also benefit from an extension of that period by approximately two weeks, which would take it out to around October 24th or 25th.

THE COURT: Well -- all right.

Mr. Princi, you wanted to be heard?

MR. PRINCI: I think, Your Honor, the particulars on moving the timeline and the schedule have to be discussed. I mean, so let me just real quick --

THE COURT: They don't have to be. I mean, I can just order.

MR. PRINCI: Or you could do that.

THE COURT: But that's, you know --

MR. PRINCI: Or you could do that.

I'm just trying to say in terms of anything constructive, Judge, I mean, I think we --

THE COURT: You don't think it would be constructive if I just rule.

MR. PRINCI: Okay. So, Judge, real quickly. With respect to the points made by Mr. Moloney, number one I think

he said July 30 was the date when we began -- when we made the HoldCo amendment; that's nottrue.

THE COURT: Well, he read for me the original -- the initial motion, and I don't have it open in front of me so -- he read from -- that talked about fixing the claim against the two operating entities, not against HoldCo.

MR. PRINCI: Right. And that's what caused, Judge -- and that's what caused the need to have to do the second amended agreement. So this is the flow. The first agreement says in the first line that "the agreements entered into between Residential Capital LLC" -- that's the HoldCo -- "and its direct and indirect subsidiaries, collectively ResCap, defined as ResCap to the debtors". And then in Article 5, Section 5.1 it says "ResCap, the defined term, hereby makes in irrevocable offer to settle and ResCap will provide the general unsecured claim of 8.7".

We explained in the motion where we thought those monies would come from. Now, that gets to the so-called -- what did he call it? -- the secret document. So secret that A, it's referenced in the plan support agreement that was filed the first day. B, it was put in the data room on July 9th --

THE COURT: What does the document show?

MR. PRINCI: It shows what the debtors anticipated -- what the debtors anticipate the waterfall will be, under the present Ally settlement agreement, into the various estates and

out to the various creditors.

THE COURT: Has it changed since the beginning of the case?

MR. PRINCI: No. So that was filed -- the secret document was put into the data room --

THE COURT: But is the document in the data room? Has it changed -- has the proposed waterfall or allocation changed since it was put into the data room?

MR. PRINCI: No. Footnote 13 refers to the following. One of the noteholders called Ms. Patrick -- as I was told. As I was told -- and basically construed this agreement differently than as it's worded. And I think based on that, that gave the institutional investors concern, as Mr. Wofford was saying: that there was a need to make a clarification about this, and that's what led to the second amended settlement agreement and the HoldCo election. The secret document was also sent to Mr. Moloney's partners -- one of the other -- one of his partners, either Mr. Lightner or Mr. O'Neal on August 22nd. So I don't know why Mr. Moloney refers to it --

THE COURT: Okay. I don't need to hear any more about --

MR. PRINCI: -- as a secret.

THE COURT: -- about that.

MR. PRINCI: Okay. Fair enough. And so let me get to

a couple of points, Judge, that I think are more relevant, and that relates to the schedule.

I think Mr. Eckstein said that he just heard today who the people were that knew -- that were involved in the negotiations; that's incorrect. We served them with interrogatory responses on September 14th and on the second page -- excuse me, in the answer to the first interrogatory response to the first interrogatory it explains that "the people who played the greatest role and had the most responsibility in the negotiation of the RMBS trust settlement agreement on behalf of the debtors are" and then it lists myself, Mr. Lee, Ms. Levitt, Mr. Newton and Mr. Clark from my firm; Ms. Hamzehpour, Mr. Thompson, Mr. Ruckdaschel and Mr. Cancelliere from the debtors. It lists Mr. Nolan and Mr. Renzi from FTI Consulting. It lists Mr. Puntus and Mr. Chopra from Centerview Partners. So it is not the case that we had not made that information available to people.

THE COURT: Okay. I've heard enough.

MR. PRINCI: With respect --

THE COURT: Mr. Princi, I've heard enough.

MR. PRINCI: Okay. Your Honor, may I just make a request for the depositions? The depositions are going to go to the topic that the examiner is covering. The depositions are not intended to really find out what we said to Ms. Patrick; that's not what people are alleging. The collusion

they're alleging isn't really that we colluded with Ms. Patrick. The collusion they're alleging is that ResCap and Ally were colluding. And I don't know, Judge, how it is and why it is that that should be undertaken now when we're dealing -- when the people who are going to otherwise be deposed are the very people, Judge, on a day in and day out basis, full-time -- example of full-time.

Ms. Hamzehpour lives in Minnesota, or she used to, because what she does now is she comes to our offices, and we have an office for her at Morrison & Foerster. And she works out of that office because we need her input literally every day for twelve hours. Literally. So people want -- while we're dealing with an auction, while we're dealing with all the lift stay motions we get, while we're dealing with plan considerations people want to take these people and depose them because of the allegation concerning our relationship with Ally that's presently being looked into by the examiner. It's just another way of dealing with that allegation. Nobody really contends that the institutional investors and ResCap were in collusion.

THE COURT: Okay. Let me stop you. Mr. Princi, when will your expert be completed with their work?

UNIDENTIFIED SPEAKER: Your Honor, are you asking about a supplemental declaration?

THE COURT: No. I'm asking for whatever you intend to

offer at the trial in this matter. When will your expert -- when will your expert's report be completed so that anybody who wishes to can take your expert's deposition?

MR. PRINCI: The final expert -- okay, Judge. The way the scheduling order was set up, it's --

THE COURT: I know what the scheduling order said.

MR. PRINCI: Okay. Understood.

THE COURT: But a lot of the dates haven't happened already, and so I'm asking you a question. If you're sticking to what the schedule said, fine.

MR. PRINCI: Judge, I'm not -- I misunderstood you. I needed clarification. Thank you. Just let me find it, Judge, sorry. I just -- Your Honor, I just --

THE COURT: All expert -- all discovery, everything was supposed to be over by October 12th. Everything, okay. That's in paragraph 9. Any expert report was supposed to be filed by October 8th. That's paragraph 8.

MR. PRINCI: Oh, here it is, Judge. Okay. I'm just trying to see when we --

THE COURT: It's not a trick question.

MR. PRINCI: No. No. No. I understand, Judge. I'm literally on my feet just trying to make sure I answer correctly. I think it was October -- in paragraph 11 it says "any reply to objections, including any rebuttal expert reports, shall be filed and served by October 29".

THE COURT: Mr. Bentley?

MR. BENTLEY: Your Honor, if it helps, I think the operative condition is in paragraph 6 of the scheduling order, the last saying says the debtors will file a supplemental expert report not later than September 24th.

THE COURT: Okay.

MR. PRINCI: That's correct, Judge.

THE COURT: And now you're sticking to that date?

MR. PRINCI: We have no problem with that, Your Honor.

THE COURT: All right. I'm going to provide you with several dates that are fixed and unchangeable, and what I expect is that you will promptly meet and confer and fill in the rest of the schedule based on the dates I'm giving you now. The November 5th hearing is being moved, and it will occur on November 13, 14 and 16. The other date I'm going to give you is November 6th, one week before the hearing. Everything needs to be filed with the Court one week before. And by everything -- I mean, things can -- the last of the filings with the Court has to be one week before, November 6th. Dates can and should be staggered before that, but this is a complicated matter. This is not the only thing I have between November 6th and November 13th. You need to agree on the date for the cutoff of all fact discovery, all expert discovery, and it seems to me listening to you that that could be the same date. But it ordinarily wouldn't be, but it sounds like the

materials on which the experts are relying is substantially produced already.

MR. PRINCI: That's correct, Your Honor.

THE COURT: And so this is not -- this doesn't strike me as the usual case; we have to wait for the conclusion of fact discovery before experts can do their reports.

All of this is premised on Mr. Princi's representation to the Court that all discovery by the debtors will be completed by October 3rd. Rolling production until then, but completed no later than October 3rd, and that the privilege log will be provided no later than October 10th. I didn't hear anyone really -- with respect to Ally, it sounds like those discovery issues have been resolved.

MR. PRINCI: I just wanted to clarify that's not with respect to the so-called alter ego discovery.

THE COURT: Well, with respect to alter ego, in light of the agreement to amend the RMBS settlement to make clear that the amount is reserved -- alter ego is off the table for purposes of this hearing.

MR. PRINCI: Okay.

THE COURT: It's off the table for discovery, and in taking alter ego off I'm also taking the HoldCo election off. What is relevant to the Court is the agreement -- I think the only change that's being made to what was circulated yesterday is this agreement with respect to -- there's no -- the amount

of any allowed claim against HoldCo is left open.

MR. PRINCI: Other than the cap.

THE COURT: Yeah.

MR. PRINCI: Yes.

THE COURT: Other than the cap.

MR. PRINCI: Yes.

THE COURT: Correct.

MR. PRINCI: That's correct, Your Honor.

THE COURT: So I'm persuaded that the history of the HoldCo election -- how it got in, how it came out, the release -- in my view is not relevant or material to the issues that the Court will have to decide at this hearing. What is relevant and material to it is the decision process by which the settlement is approved. And so if amendments were never approved by the board, that's relevant.

As part of your agreement with respect to a discovery schedule -- now, if you can't work it out contact chambers promptly. I mean, this should be worked out within the next day or so. If you can't, arrange a telephone conference and I'll just set the dates. You ought to be able to do it. Just set this -- I'm not questioning the good faith of everybody in agreeing on this schedule. I'm not questioning the good faith of parties in going forward with discovery. You are where you are. It's complicated, there's a lot of discovery.

I think it's important -- and maybe it's already

happened. There seems to be some disagreement about it -- as to identification of individuals with knowledge about the settlement negotiations and the settlement. Disclosure of the identities of those individuals should happen --

MR. PRINCI: That's been complete already.

THE COURT: I don't want to get into a disagreement about whether it has or it hasn't happened, okay? If it has, that's great.

MR. PRINCI: It has.

THE COURT: If not, I mean, like within the next two days there better be just accurate disclosure of anyone who is involved. With respect to the depositions of lawyers, I will not permit depositions of outside counsel at this time. Depositions of in-house counsel of those individuals who were substantially involved in negotiations of a settlement in the Court's view are proper and should go forward.

If there's an assertion of privilege with respect to specific questions, I'm not ruling on that. I'm not ruling that there's no privilege that attaches, but what I am ruling is that the settlement -- everybody has indicated it was substantially negotiated by counsel. Ms. Hamzehpour, the general counsel was substantially involved, Mr. Cancelliere, Mr. Nolan, Mr. Renzi, Mr. Puntus, Mr. Chopra, all identified today as having been involved. They clearly should be deposed. No depositions of outside counsel without further order of the

Court. And I hope that will be unnecessary. If there's a further dispute about it, promptly arrange for a telephone conference with the Court and I'll endeavor to resolve it promptly.

It's too late in the day to put issues off in the hopes that they'll go away. That's well and good, but not with the schedule. So meet and confer properly; if you can't resolve it arrange a call and I will resolve it. These dates that I'm giving you, November 13th, 14th and 16th, if the hearing doesn't happen on those days it won't happen until next year. I want it to happen on those days. It depends on everybody moving forward and cooperating. But just to make it clear, I don't think November 5th is a realistic date in light of where we are in the discovery schedule today. And I think good cause has been established to move the hearing date, and that's what I've done, and those are the only days that I have that I can do this. The hearing will be limited to three days.

The court's closed on the 12th, otherwise we would have the hearing on the 12th. So the 13th, right now ResCap is on the calendar for the 13th. Borders is on the calendar as well. I will move the Borders' hearing date. On the 14th Grubb & Ellis is on the calendar and we will move that date. The 15th is MF Global and I can't change -- I'm not changing that. I guess you're on and General Maritime in the afternoon, is that -- I can't change the 14th. The 13th and 14th, you

need -- it's important now -- this is going to be a timed trial. You need to try and agree on the allocation of time. If you can't -- if the parties-in-interest can't agree I will make the allocation. I don't mind on the 13th and 14th running late into the evening on both of those days. On the 16th, on Friday, I will not run court past 5 o'clock, so the 16th we have to end by 5. On the 13th and 14th I will listen to what -- the good faith estimates of the amount of time required.

Typically, what I do with a timed trial -- here there are many more parties opposing or objecting at this stage; maybe some of those will be resolved, and some of those were limited objections, but there are a number of major contestants to this settlement. They obviously need to confer; I'm not going to allow any duplication of effort. All direct examination should be in written narrative form with the declarants available for cross-examination in court. That's why I want the papers a week in advance, because I will have read everything before the hearing. All exhibits need to be pre-marked, moving party numbering, objectors lettering exhibits. Everything has to be -- you need to coordinate because everything has to have a unique identifier.

I would like to have a telephone conference to discuss what will hopefully be a finalized schedule this Friday, September 21 at 2 p.m. So you have until to work out any of

these dates. You ought to be able to do that.

Any other issues?

MR. PRINCI: No, Your Honor.

THE COURT: Anybody else have -- anybody want to be heard?

All right. We're adjourned.

MR. PRINCI: Thank you, Judge.

(Whereupon these proceedings were concluded at 1:29 PM)

C E R T I F I C A T I O N

I, Zipporah Geralnik, certify that the foregoing transcript is a true and accurate record of the proceedings.

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ZIPPORAH GERALNIK

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